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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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1865.

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107 ing, on the day of , A. D. 18 ,
 108 in said county, committed the offense of (here state
 109 the offense charged in the warrant,) and in the progress of
 110 the trial on said charge, it appearing to the said justice
 111 that the said had been guilty of the offense of
 112 (here state the new offense found on the trial,)
 113 committed at the time and place aforesaid, of which offense,
 114 the said justice has not final jurisdiction; and whereas,
 115 after examination, had in due form of law, touching the
 116 said charge and offense last aforesaid, the said justice did
 117 adjudge that the said offense had been committed, and that
 118 there was probable cause to believe the said to
 119 be guilty thereof; and whereas, the said has
 120 not offered sufficient bail for his appearance to answer for
 121 said offense, you are therefore commanded, forthwith to
 122 take the said and him convey to the common
 123 jail of said county, the keeper whereof is hereby required
 124 to detain him in custody, in said jail, until he shall be
 125 thence discharged according to law.
 126 Given under my hand this day of , A. D. 18 .
 127 J. P., justice of the peace.

CHAPTER LXVI.

CIVIL ACTIONS.

TITLE I.

OF THE FORM OF CIVIL ACTIONS.

1 SECTION 1. The distinction between actions at law, and
 2 suits in equity and the forms of all such actions and suits, C. S. p. 532, Sect. 1. *e 60*
 3 are abolished; and there shall be in this state, but one form Amended.
 4 of action, for the enforcement or protection of private rights,
 5 and the redress of private wrongs; which shall be called
 6 a civil action.

1 SECT. 2. The party complaining shall be known as the C. S. p. 532, Sect. 2.
 2 plaintiff, and the adverse party as the defendant.

TITLE II.

THE TIME OF COMMENCING ACTIONS.

1 SECT. 3. Actions can only be commenced within the

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C. S. p. 532, Sect. 3. 2 periods prescribed in this chapter, after the cause of action
3 accrues, except where in special cases a different limitation
4 is prescribed by statute.

C. S. p. 532, Sect. 4. 1 SECT. 4. No action for the recovery of real property, or
2 for the recovery of the possession thereof, shall be main-
3 tained unless it appears that the plaintiff, his ancestor, pre-
4 decessor, or grantor, was seized or possessed of the premi-
5 ses in question, within twenty years before the commence-
6 ment of the action. The periods prescribed in the preced-
7 ing section for the commencement of actions, are as follows :

C. S. p. 532, Sect. 5. 1. SECT. 5. Within ten years :
2 *First.*—An action upon a judgment or decree of a court
3 of the United States, or of any state or territory of the
4 United States.

C. S. p. 532, Sect. 6. 1 SECT. 6. Within six years :
2 *First.*—An action upon a contract or other obligation,
3 express or implied, excepting those mentioned in the pre-
4 ceding section ;
5 *Second.*—An action upon a liability created by statute,
6 other than those upon a penalty or forfeiture ;
7 *Third.*—An action for trespass upon real property ;
8 *Fourth.*—An action for taking, detaining, and injuring
9 personal property, including actions for the specific recove-
10 ry thereof ;
11 *Fifth.*—An action for criminal conversation, or for any
12 other injury to the person or rights of another, not arising
13 on obligation, and not hereinafter enumerated.
14 *Sixth.*—An action for relief, on the ground of fraud ;
15 the cause of action in such case not to be deemed to have
16 accrued, until the discovery by the aggrieved party of the
17 facts constituting the fraud.

C. S. p. 533, Sect. 7.
Amended. 1 SECT. 7. Within three years :
2 *First.*—An action against a sheriff, coroner, or consta-
3 ble, upon a liability by the doing of an act in his official
4 capacity, and in virtue of his office, or by the omission of
5 an official duty, including the non-payment of money col-
6 lected upon an execution.
7 *Second.*—An action upon a statute for a penalty or for-
8 feiture, where the action is given to the party aggrieved or
9 to such party and the state of Minnesota.

C. S. p. 533, Sect. 8. 1 SECT. 8. Within two years :
2 *First.*—An action for libel, slander, assault, battery, or
3 false imprisonment ;
4 *Second.*—An action upon a statute for a forfeiture or
5 penalty to the state.

1 SECT. 9. In an action brought to recover a balance due
 2 upon a mutual, open, and current account, when there have
 3 been reciprocal demands between the parties, the cause of
 4 action is deemed to have accrued from the time of the last
 5 item proved in the account on either side. c 60

1 SECT. 10. Every action upon a statute for a penalty
 2 given in whole or in part, to the person who prosecutes for
 3 the same, shall be commenced by said party within one
 4 year after the commission of the offense; and if the action
 5 is not commenced within one year by a private party, it
 6 may be commenced within two years thereafter on behalf
 7 of the state, by the attorney general, or the county attor-
 8 ney of the county where the offense was committed. C. S. p. 533, Sect. 11.

1 SECT. 11. An action for relief not hereinbefore provi-
 2 ded for, shall be commenced within ten years after the cause
 3 of action accrues. C. S. p. 533, Sect. 12.

1 SECT. 12. The limitations prescribed in this chapter
 2 for the commencement of actions, shall apply to the same
 3 actions when brought in the name of the state, or in the
 4 name of any officer, or otherwise, for the benefit of the
 5 state, in the same manner as to actions brought by citizens. C. S. p. 533, Sect. 13.
Amended.

1 SECT. 13. An action is commenced as to each defend-
 2 ant, when the summons is served on him, or on a co-de-
 3 fendant who is a joint contractor, or otherwise united in
 4 interest with him, and is deemed to be pending from the
 5 time of its commencement, until its final determination upon
 6 appeal, or until the time for an appeal has passed, and the
 7 judgment has been satisfied. C. S. p. 533, Sect. 14; c 60
C. S. p. 629, Sect. 34, c 72
combined.

1 SECT. 14. An attempt to commence an action is deem-
 2 ed equivalent to the commencement thereof, within the
 3 meaning of this chapter, when the summons is delivered,
 4 with the intent that it shall be actually served, to the sher-
 5 iff or other officer of the county, in which the defendants,
 6 or one of them usually or last resided; or if a corporation
 7 is a defendant, to the sheriff or other officer of the county
 8 in which such corporation was established by law, or where
 9 its general business was transacted, or where it kept an
 10 office for the transaction of business; but such an attempt
 11 shall be followed by the first publication of the summons,
 12 or the service thereof, within sixty days. C. S. p. 533, Sect. 15. c 60

1 SECT. 15. If, when the cause of action accrues against
 2 a person, he is out of the state, the action may be com-
 3 menced within the times herein limited after his return to
 4 the state; and if, after the cause of action accrues, he de- C. S. p. 533, Sect. 16.
Amended.

5 parts from and resides out of the state, the time of his ab-
6 sence is not part of the time limited for the commencement
7 of the action.

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1 SECT. 16. When a cause of action has arisen in a state
2 or territory out of this state, or in a foreign country, and
3 by the laws thereof, an action thereon cannot there be
4 maintained by reason of the lapse of time, an action thereon
5 cannot be maintained in this state, except in favor of a cit-
6 izen thereof, who has had the cause of action from the time
7 it accrued.

C. S. p. 620, Sect. 39.

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1 SECT. 17. If a person, entitled to bring an action men-
2 tioned in this chapter, except for a penalty, or forfeiture,
3 is, at the time the cause of action accrued, either

C. S. p. 633, Sect. 17.

4 *First.*—Within the age of twenty-one years; or

5 *Second.*—Insane; or

6 *Third.*—Imprisoned on a criminal charge, or in execu-
7 tion under the sentence of a criminal court for a term less
8 than his natural life; or

9 *Fourth.*—A married woman;

10 The time of such disability is not a part of the time lim-
11 ited for the commencement of the action, except that the
12 period within which the action must be brought, cannot be
13 extended more than five years by any such disability, ex-
14 cept infancy, nor can it be so extended in any case, longer
15 than one year after the disability ceases.

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1 SECT. 18. If a person entitled to bring an action, dies
2 before the expiration of the time limited for the commence-
3 ment thereof, and the cause of action survives, an action
4 may be commenced by his personal representatives after the
5 expiration of that time, and within one year from his death.
6 If a person against whom an action may be brought, dies
7 before the expiration of the time limited for the commence-
8 ment thereof, and the cause of action survives, an action
9 may be commenced against his representatives, after the
10 expiration of that time, and within one year after the issu-
11 ing of letters testamentary or of administration.

C. S. p. 534, Sect. 18.

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1 SECT. 19. The time which elapses between the death
2 of a person, and the granting of letters testamentary, and of
3 administration on his estate, not exceeding six months, and
4 the period of six months after the granting of such let-
5 ters are not to be deemed any part of the time limi-
6 ted for the commencement of actions by executors or ad-
7 ministrators.

C. S. p. 611, Sect. 6.

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1 SECT. 20. When a person is an alien, subject, or citizen
2 of a country at war with the United States, the time of the

C. S. p. 534, Sect. 10.

3 continuance of the war is not a part of the period limited for
4 the commencement of the action.

1 SECT. 21. When the commencement of an action is stay-
2 ed by injunction, or statutory prohibition, the time of the
3 continuance of the injunction or prohibition, is not part of
4 the time limited for the commencement of the action. C. S. p. 531, Sect. 20. c 60

1 SECT. 22. No person can avail himself of disability, un-
2 less it existed at the time his right of action accrued. C. S. p. 534, Sect. 21.

1 SECT. 23. When two or more disabilities co-exist at the
2 time the right of action accrues, the limitation does not at-
3 tach until they are all removed. C. S. p. 534, Sect. 22.

1 SECT. 24. No acknowledgment or promise is sufficient
2 evidence of a new or continuing contract by which to take
3 the case out of the operation of this chapter, unless the same
4 is contained in some writing, signed by the party to be
5 charged thereby; but this section shall not alter the effect
6 of any payment of principal or interest. C. S. p. 534, Sect. 23.
Amended.

1 SECT. 25. If any action is commenced within the time
2 prescribed therefor, and judgment given therein for the
3 plaintiff, and the same is arrested or reversed on error or
4 appeal, the plaintiff may commence a new action within one
5 year after such reversal or arrest. C. S. p. 534, Sect. 25.

TITLE III.

THE PARTIES TO CIVIL ACTIONS.

1 SECT. 26. Every action shall be prosecuted in the name
2 of the real party in interest, except as hereinafter provided;
3 but this section does not authorize the assignment of a thing
4 in action not arising out of contract. C. S. p. 534, Sect. 27.

1 SECT. 27. In the case of an assignment of a thing in ac-
2 tion, the action by the assignee is without prejudice to any
3 set-off, or other defense existing at the time of; or before
4 notice of the assignment; but this section does not apply to
5 a negotiable promissory note, or bill of exchange, transfer-
6 red in good faith and upon good consideration, before due. C. S. p. 535, Sect. 28.

1 SECT. 28. An executor or administrator, a trustee of an
2 express trust, or a person expressly authorized by statute,
3 may sue without joining with him the person for whose ben-
4 efit the action is prosecuted. A person with whom, or in C. S. p. 535, Sect. 29.

5 whose name a contract is made for the benefit of another,
6 is a trustee of an express trust within the meaning of this
7 section.

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C. S. p. 535, Sect. 30.
Amended.

1 SECT. 29. When a married woman is a party her hus-
2 band shall be joined with her, except that,
3 *First.*—When the action concerns her separate property
4 she may sue alone.
5 *Second.*—When the action is between herself and her
6 husband she may sue or be sued alone; and in no case need
7 she prosecute or defend by a guardian or next friend.

C. S. p. 535, Sect. 31.

1 SECT. 30. When an infant is a party, he shall appear
2 by his guardian, who shall be appointed by the court in
3 which the action is prosecuted, or by a judge thereof.

C. S. p. 535, Sect. 32.
Amended.

1 SECT. 31. The guardian shall be appointed as follows:
2 *First.*—When the infant is plaintiff, upon the application
3 of the infant, if he is of the age of fourteen; or if under
4 that age, upon the application of a relation or friend of the
5 infant; if made by a relative or friend of the infant, notice
6 thereof shall first be given to such guardian, if he has one;
7 if he has none, then to the person with whom such infant re-
8 sides;
9 *Second.*—When the infant is defendant, upon an applica-
10 tion of the infant, if he is of the age of fourteen years, and
11 applies within twenty days after the service of the summons,
12 if he is under the age of fourteen, or neglects so to apply,
13 then, upon the application of any other party to the action,
14 or of a relation or friend of the infant, after notice of such
15 application being first given to the general or testamentary
16 guardian of such infant, if he has one within this state; if
17 he has none then to the infant himself, if over fourteen
18 years of age and within the state, or if under that age and
19 within the state, to the person with whom such infant resides.

C. S. p. 535, Sect. 33.

1 SECT. 32. A father, or in case of his death, or desertion
2 of his family, the mother may prosecute as plaintiff for the
3 seduction of the daughter, and the guardian for the seduc-
4 tion of the ward, though the daughter or ward is not living
5 with, or in the service of the plaintiff at the time of the se-
6 duction, or afterwards; and there is no loss of service.

C. S. p. 535, Sect. 34.

1 SECT. 33. A father, or in case of his death or deser-
2 tion of his family, the mother may maintain an action for
3 the injury of the child, and the guardian for the injury of
4 his ward.

C. S. p. 535, Sect. 35.

1 SECT. 34. When a husband has deserted his family, the
2 wife may prosecute or defend in his name, any action which

3 he might have prosecuted or defended, and shall have the
4 same powers and rights therein as he might have had.

1 SECT. 35. Persons severally liable upon the same ob- C. S. p. 535, Sect. 35. c 60
2 ligation or instrument, including the parties to bills of ex-
3 change and promissory notes, and sureties on the same in-
4 strument, may all or any of them, be included in the same
5 action at the option of the plaintiff.

1 SECT. 36. An action does not abate by the death, mar-
2 riage, or other disability of a party, or by the transfer of C. S. p. 535, Sect. 37.
3 any interest, if the cause of action survives or continues. Amended.
4 In case of the death, marriage, or other disability of a party,
5 the court on motion at any time within one year thereafter
6 or afterwards on a supplemental complaint, may allow the
7 action to be continued by or against his representative or
8 successor in interest. In case of any other transfer of in-
9 terest, the action shall be continued in the name of the
10 original party, or the court may allow the person to whom
11 the transfer is made, to be added or substituted in the ac-
12 tion.

1 SECT. 37. When two or more persons associated in any C. S. p. 536, Sect. 38.
2 business, transact such business under a common name, Amended.
3 whether it comprises the names of such persons or not, the
4 associates may be sued by such common name; the process
5 in such case being served on one or more of the associates,
6 the judgment in the action shall bind the joint property of
7 all the associates in the same manner as if all had been
8 named defendants.

TITLE IV.

THE PLACE OF TRIAL OF CIVIL ACTIONS.

1 SECT. 38. Actions for the following causes shall be
2 tried in the county in which the subject of the action, or
3 some part thereof is situated, subject to the power of the C. S. p. 536, Sect. 39.
4 court to change the place of trial as hereinafter provided:
5 *First.*—For the recovery of real property, or of an es-
6 tate or interest therein, or for the determination in any form
7 of such right or interest and for injuries to real property;
8 *Second.*—For the partition of real property;
9 *Third.*—For the foreclosure of a mortgage of real prop-
10 erty;
11 *Fourth.*—For the recovery of personal property distrain-
12 ed for any cause.

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C. S. p. 536, Sect. 40.

1 SECT. 39. Actions for the following causes shall be tried
2 in the county where the cause or some part thereof arose,
3 subject to the power of the court to change the place of trial
4 as provided by law :

5 *First.*—For the recovery of a penalty or forfeiture im-
6 posed by statute, except that where it is imposed for an
7 offense committed on a lake, river, or other stream of water
8 situated in two or more counties, the action may be brought
9 in any county bordering on such lake, river or stream ;

10 *Second.*—Against a public officer or person specially
11 appointed to execute his duties, for an act done by him in
12 virtue of his office, or against a person who by his com-
13 mand or in his aid does anything touching the duties of such
14 officer.

C. S. p. 536, Sect. 41.

1 SECT. 40. In all other cases the action shall be tried in
2 the county in which the parties or one of them, reside at
3 the commencement of the action, or if none of the parties
4 resides in this state, the same may be tried in any county
5 which the plaintiff may designate in his complaint, subject
6 however to the power of the court to change the place of
7 trial as provided by law.

C. S. p. 536, Sect. 42.

1 SECT. 41. If the defendant is a non-resident of this
2 state and the plaintiff proceeds against him, by attaching
3 his property, such action may be brought in any county
4 where the defendant has property liable to attachment.

C. S. p. 536, Sect. 43.
Amended.

1 SECT. 42. If the county designated for that purpose in
2 the complaint is not the proper county, the action may, not-
3 withstanding, be tried therein unless the defendant, before
4 the time for answering expires; demands in writing that the
5 trial be had in the proper county, and the place of trial is
6 thereupon changed by consent of parties or by order of
7 court as is provided in this section. The court may change
8 the place of trial in the following cases :

9 *First.*—When the county designated for that purpose in
10 the complaint is not the proper county ;

11 *Second.*—When there is reason to believe that an impar-
12 tial trial cannot be had therein ;

13 *Third.*—When the convenience of witnesses, and the
14 ends of justice would be promoted by the change.

15 *Fourth.*—A change of venue may, in all civil cases, be
16 made, upon the consent in writing of the parties or their at-
17 torneys. When the place of trial is changed, all other pro-
18 ceedings shall be had in the county to which the place of
19 trial is changed unless otherwise provided by the consent of
20 the parties in writing duly filed, or order of the court, and
21 the papers shall be filed or transferred accordingly.

TITLE V.

SERVICE OF SUMMONS, PLEADINGS, NOTICES AND APPEARANCE OF PARTIES.

1 SECT. 43. Civil actions in the several district courts of C. S. p. 537, Sect. 48. c 60
 2 this state shall be commenced by the service of a summons,
 3 as hereinafter provided.

1 SECT. 44. The summons shall be subscribed by the
 2 plaintiff or his attorney and directed to the defendant, re- C. S. p. 537, Sect. 49.
 3 quiring him to answer the complaint, and file his answer in Amended.
 4 the office of the clerk of the court in which the action is
 5 brought within thirty days after the service of the summons,
 6 exclusive of the day of service, and shall notify the defend-
 7 ant of the filing of the complaint.

1 SECT. 45. The summons shall also contain a notice in
 2 substance as follows :

3 *First.*—In an action arising on contract for the payment C. S. p. 537, Sect. 50.
 4 of money only, that he will take judgment for a sum speci- Amended.
 5 fied therein, if the defendant fails to answer the complaint.

6 *Second.*—In other actions for the recovery of money only,
 7 that he will, upon such failure, have the amount he is entitled
 8 to recover, ascertained by the court, or under its direction,
 9 and take judgment for the amount so ascertained.

10 *Third.*—In other actions, that if the defendant fails to
 11 answer the complaint, the plaintiff will apply to the court
 12 for the relief demanded therein.

1 SECT. 46. The complaint shall be filed in the office of C. S. p. 537, Sect. 51.
 2 the clerk of the court, in which the action is brought, prior Amended.
 3 to the service of the summons in such action.

1 SECT. 47. The summons shall be served by the sheriff C. S. p. 538, Sect. 52.
 2 of the county where the defendant is found, or in case of Amended.
 3 his absence or inability to act, by the coroner or any cons-
 4 table of the county ; and the service shall be made and the
 5 summons returned and filed in the clerk's office with all
 6 reasonable diligence.

1 SECT. 48. The summons shall be served by delivering
 2 a copy thereof, as follows :

3 *First.*—If the action is against a corporation, to the pres-
 4 ident, or other head of the corporation, secretary, cashier, C. S. p. 538, Sect. 53.
 5 treasurer, a director or managing agent thereof ; but such Amended.
 6 service can be made in respect to a foreign corporation only
 7 when it has property within this state, or the cause of ac-
 8 tion arose therein.

9 *Second.*—If against a minor under the age of fourteen

10 years, to such minor personally, and also to his father,
11 mother, or guardian, or if there is none within this state,
12 then to any person having the care or control of such mi-
13 nor, or with whom he resides, or by whom he is employed.

14 *Third.*—If against a person for whom a guardian has
15 been appointed for any cause, to such guardian, and to the
16 defendant personally.

17 *Fourth.*—In all other cases to the defendant personally,
18 or by leaving a copy of the summons at the house of his
19 usual abode, with some person of suitable age and discre-
20 tion then resident therein.

1 *SECT. 49.* - When the defendant cannot be found within
2 the state, of which the return of the sheriff of the county in
3 which the action is brought, that the defendant cannot be
4 found in the county, is *prima facie* evidence, and upon the
5 presentation of an affidavit of the plaintiff, his agent or at-
6 torney, to the court or judge stating that he believes that
7 the defendant is not a resident of the state, and cannot be
8 found therein, if the complaint in the opinion of the judge
9 states a good cause of action against the defendant, or
10 shows that he is a proper party to an action relating to real
11 property in this state, such court, or judge, may grant an
12 order that the service be made by the publication of a sum-
13 mons in either of the following cases:

14 *First.*—When the defendant is a foreign corporation,
15 and has property within this state.

16 *Second.*—When the defendant being a resident of this
17 state has departed therefrom with intent to defraud his cred-
18 itors, or to avoid the service of a summons, or keeps him-
19 self concealed therein with like intent.

20 *Third.*—When the defendant is not a resident of the
21 state, but has property therein, and the action arises on
22 contract, and the court has jurisdiction of the subject of
23 the action.

24 *Fourth.*—When the action is for divorce in the cases
25 prescribed by law.

26 *Fifth.*—When the subject of the action is real or per-
27 sonal property in this state, and the defendant has or claims
28 a lien or interest actual or contingent therein, or the re-
29 lief demanded consists wholly or partly in excluding the
30 defendant from any interest or lien therein.

1 *SECT. 50.* The publication shall be made in a newspa-
2 per printed and published in the county where the action is
3 brought, and if there is no such newspaper in the county,
4 then in a newspaper printed and published at the capital of
5 the state, once in each week for six consecutive weeks, and
6 the service of the summons shall be deemed complete at
7 the expiration of the time prescribed for publication as
8 aforesaid.

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C. S. p. 538, Sect. 54.
Amended.

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1864—p. 91, Sect. 2.

1 SECT. 51. If the summons is not personally served on
 2 the defendant, nor received by him through the post office,
 3 in the cases provided in the last two sections, he or his rep-
 4 resentatives, on application and sufficient cause shown, at
 5 any time before judgment, shall be allowed to defend the
 6 action; and except in an action for divorce, the defendant
 7 or his representatives may in like manner be allowed to de-
 8 fend after judgment, and within one year after the rendi-
 9 tion of such judgment, on such terms as may be just; and
 10 if the defense is successful, and the judgment, or any part
 11 thereof, has been collected or otherwise enforced, such res-
 12 titution may thereupon be compelled as the court directs.

C. S. p. 530, Sect. 56.

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1 SECT. 52. When the action is against two or more de-
 2 fendants, and the summons is served on one or more, but
 3 not all of them, the plaintiff may proceed as follows:
 4 *First.*—If the action is against the defendants jointly
 5 indebted upon a contract, he may proceed against the de-
 6 fendants served, unless the court otherwise directs, and if
 7 he recovers judgment, it may be entered against all the de-
 8 fendants thus jointly indebted, so far only as that it may be
 9 enforced against the joint property of all, and the separate
 10 property of the defendants served.
 11 *Second.*—If the action is against defendants severally li-
 12 able, he may proceed against the defendants served, in the
 13 same manner as if they were the only defendants.
 14 *Third.*—Though all the defendants have been served with
 15 the summons, judgment may be taken against any of them
 16 severally, when the plaintiff would be entitled to judg-
 17 ment against such defendants if the action had been against
 18 them alone.

C. S. p. 530, Sect. 57;
C. S. p. 534, Sect.
172, combined.c 60
c 60

1 SECT. 53. Proof of the service of the summons, and of
 2 the complaint or notice, if any accompanying the same,
 3 shall be as follows:
 4 *First.*—If served by the sheriff or other officer, his certi-
 5 cate thereof; or,
 6 *Second.*—In case of publication, the affidavit of the prin-
 7 ter or his foreman, showing the same, and an affidavit of the
 8 deposit of a copy of the summons in the post office, if the
 9 same has been deposited; or,
 10 *Third.*—The written admission of the defendant.
 11 In case of service otherwise than by publication, the cer-
 12 tificate, affidavit, or admission shall state the time, place,
 13 and manner of service.

C. S. p. 530, Sect.
53. Amended.

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1 SECT. 54. From the time of the service of the summons
 2 in a civil action, the court is deemed to have acquired juris-
 3 diction, and to have control of all the subsequent pro-
 4 ceedings. A voluntary appearance of a defendant is
 5 equivalent to a personal service of the summons upon him.

C. S. p. 530, Sect. 50.

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C. S. p. 629, Sect.
36. Amended.

1 SECT. 55. No natural person is subject to the jurisdic-
2 tion of a court of this state, unless he appears in the court,
3 or is found within the state, or is served with process there-
4 in, or is a resident thereof, or have property therein upon
5 which the plaintiff has acquired a lien by attachment or
6 garnishment, and then only to the extent of such property,
7 except in cases where it is otherwise expressly provided by
8 statute.

C. S. p. 629, Sect.
37. Amended.

1 SECT. 56. No corporation is subject to the jurisdiction
2 a court of this state, unless it appears in the court, or has
3 been created by or under the laws of this state, or has an
4 agency established therein for the transaction of some por-
5 tion of its business, or has property therein upon which
6 the plaintiff has acquired a lien by attachment or garnish-
7 ment, and in the last case, only to the extent of such prop-
8 erty at the time the jurisdiction attached.

C. S. p. 628, Sect. 26.

1 SECT. 57. A defendant appears in an action when he
2 answers, demurs, or gives the plaintiff written notice of his
3 appearance; after appearance, a defendant is entitled to no-
4 tice of all subsequent proceedings; but when a defendant
5 has not appeared, service of notices or papers in the ordin-
6 ary proceedings in an action, need not be made upon him.

C. S. p. 627, Sect. 22.

1 SECT. 58. Notices shall be in writing; and notices and
2 other papers may be served on the party or attorney in the
3 manner prescribed in the next three sections, where not
4 otherwise provided by statute.

C. S. p. 627, Sect. 23.

1 SECT. 59. The service may be personal or by delivery to
2 the party or attorney on whom the service is required to be
3 made, or it may be as follows:
4 *First.*—If upon an attorney, it may be made during his
5 absence from his office, by leaving the papers with his clerk
6 therein, or with a person having charge thereof; or, when
7 there is no person in the office, by leaving it between the
8 hours of six in the morning and nine in the evening in a
9 conspicuous place in the office; or if it is not open so as to
10 admit of such service, then by leaving it at the attorney's
11 residence with some person of suitable age and discretion;
12 *Second.*—If upon a party, it may be made by leaving the
13 papers at his residence between the hours of six in the
14 morning and nine in the evening, with some person of suit-
15 able age and discretion.

C. S. p. 628, Sect. 24.

1 SECT. 60. Service by mail may be made, when the per-
2 son making the service, and the persons on whom it is to
3 be made reside in different places between which there is a
4 regular communication by mail.

1 SECT. 61. In case of service by mail, the paper shall be
 2 deposited in the post office, addressed to the person on
 3 whom it is served at his place of residence, and the postage
 4 paid; and in such case the time of service shall be double
 5 that required in case of personal service. C. S. p. 628, Sect. 23 c72

1 SECT. 62. Where a plaintiff or defendant who has ap-
 2 peared, resides out of the state, and has no attorney in the
 3 action, the service may be made by mail if his residence is
 4 known; if not known, on the clerk for him. But where a
 5 party has an attorney in the action, the service of papers
 6 shall be upon the attorney instead of the party. C. S. p. 628, Sect. 27.

1 SECT. 63. The provisions of the four preceding sec-
 2 tions do not apply to the service of a summons, or other
 3 process, or of any paper to bring a party into contempt. C. S. p. 628, Sect. 28.

1 SECT. 64. A notice or other paper is valid and effectual,
 2 though the title of the action in which it is made is omitted,
 3 or it is defective either in respect to the court or parties, if it
 4 intelligently refers to such action or proceeding; and in
 5 furtherance of justice upon proper terms, any other defect
 6 or error in any notice or other paper or proceeding, may
 7 be amended by the court, and any mischance, omission or
 8 defect relieved within one year thereafter; and the court
 9 may enlarge or extend the time for good cause shown with-
 10 in which by statute any act is to be done, proceeding had
 11 or taken, notice or paper filed or served, or may on such
 12 terms as are just, permit the same to be done or supplied
 13 after the time therefor has expired, except that the time for
 14 bringing a writ of error or appeal shall in no case be en-
 15 larged, or a party be permitted to bring such writ of error
 16 or appeal after the time therefor has expired. C. S. p. 628, Sect. 29.

1 SECT. 65. The pleadings and various bonds required to
 2 be given by statute, and the affidavits and other written
 3 proceedings in an action, shall be filed or entered in court,
 4 or with the clerk thereof, unless the court expressly pro-
 5 vide for a different disposition thereof, except that the
 6 bonds provided for by this chapter, on the claim and deliv-
 7 ery of personal property, shall after the justification of the
 8 sureties be delivered by the sheriff to the parties respec-
 9 tively for whose benefit they are taken. C. S. p. 628, Sect. 30. Amended.

1 SECT. 66. No copies of any pleadings need be served
 2 on the adverse party but the clerk shall furnish the party
 3 with copies thereof on application to him and payment of
 4 his fees. Now.

1 SECT. 67. A defendant who has appeared, may, with-

c72

C. S. p. 630, Sect.
48. Amended.

2 out answering, demand in writing an assessment of dama-
3 ges, or of the amount which the plaintiff is entitled to re-
4 cover, and thereupon such assessment shall be had, or any
5 such amount ascertained, in such manner as the court on
6 application may direct, and judgment entered by the clerk
7 for the amount so assessed or ascertained.

C. S. p. 630, Sect. 42.

1 SECT. 68. The time within which an act is to be done,
2 shall be computed by excluding the first day, and including
3 the last. If the last day is Sunday, it shall be excluded.

C. S. p. 630, Sect. 43.

1 SECT. 69. The publication of legal notices required by
2 law, or by an order of a judge or court, to be published in
3 a newspaper once in each week, for a specified number of
4 weeks, shall be made on the day of each week in which such
5 newspaper is published.

TITLE VI.

PLEADINGS IN CIVIL ACTIONS.

c60

C. S. p. 630, Sect.
61. Amended.

1 SECT. 70. The forms of proceedings in civil actions, and
2 the rules by which the sufficiency of pleadings is to be deter-
3 mined, shall be regulated by statute.

C. S. p. 640, Sect. 62.

1 SECT. 71. The only pleadings on the part of the plain-
2 tiff are ;
3 *First.*—The complaint ;
4 *Second.*—The demurrer or reply.
5 And on the part of the defendant :
6 *First.*—Demurrer ;
7 *Second.*—The answer.

THE COMPLAINT.

C. S. p. 640, Sect. 63.

1 SECT. 72. The first pleading on the part of the plain-
2 tiff, is the complaint.

Amended.

1 SECT. 73. The complaint shall contain :
2 *First.*—The title of the cause, specifying the court in
3 which the action is brought, the county in which the action
4 is brought, and the names of the parties to the action, plain-
5 tiff and defendant ;
6 *Second.*—A plain and concise statement of the facts con-
7 stituting a cause of action, without unnecessary repetition.
8 *Third.*—A demand of the relief to which the plaintiff
9 supposes himself entitled. If the recovery of money is
10 demanded, the amount thereof shall be stated.

THE DEMURRER.

1 SECT. 74. The defendant may demur to the complaint
2 within thirty days after notice of the filing thereof, when it
3 appears upon the face thereof, either :

4 *First.*—That the court has no jurisdiction of the person
5 of the defendant or the subject of the action ;

6 *Second.*—That the plaintiff has not legal capacity to sue ;

7 *Third.*—That there is another action pending between
8 the same parties for the same cause ;

9 *Fourth.*—That there is a defect of parties, plaintiff or
10 defendant ;

11 *Fifth.*—That several causes of action are improperly
12 united ;

13 *Sixth.*—That the complaint does not state facts sufficient
14 to constitute a cause of action.

1 SECT. 75. The demurrer shall distinctly specify the
2 grounds of objection to the complaint ; unless it do so, it
3 may be disregarded. It may be taken to the whole com-
4 plaint, or to any of the causes of action stated therein.

1 SECT. 76. If the complaint is amended, it shall be filed
2 in the proper office and notice thereof served upon the
3 defendant, who shall answer it within thirty days after ser-
4 vice of said notice, or the plaintiff, upon filing with the
5 clerk proof of the service of said notice, and of the defen-
6 dant's omission, may proceed to obtain judgment, as in
7 other cases of failure to answer.

1 SECT. 77. When any of the matters enumerated in sec-
2 tion seventy-four, do not appear upon the face of the com-
3 plaint, the objection may be taken by answer.

1 SECT. 78. If no such objection is taken, either by de-
2 murrer or answer, the defendant is deemed to have waived
3 the same, excepting only the objection to the jurisdiction of
4 the court, and the objection that the complaint does not
5 state facts sufficient to constitute a cause of action.

THE ANSWER.

1 SECT. 79. The answer of the defendant shall contain :

2 *First.*—A denial of each allegation of the complaint, con-
3 troverted by the defendant, or of any knowledge or infor-
4 mation thereof sufficient to form a belief ;

5 *Second.*—A statement of any new matter constituting a
6 defense or counter claim, in ordinary and concise language,
7 without repetition.

8 *Third.*—All equities existing at the time of the com-

C. S. p. 540, Sect.
65. Amended.C. S. p. 540, Sect.
66. Amended.C. S. p. 540, Sect.
67. Amended.

C. S. p. 540, Sect. 68.

C. S. p. 540, Sect. 69.

C. S. p. 541, Sect. 70 ;
C. S. p. 431, Sect.
23, combined &
amended.

c 60

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c 57

9 mencement of any action, in favor of a defendant therein,
10 or discovered to exist after such commencement, or inter-
11 vening before a final decision, in such action. And if the
12 same are admitted by the plaintiff, or the issue thereon, is
13 determined in favor of the defendant, he shall be entitled to
14 such relief, equitable or otherwise, as the nature of the case
15 demands, by judgment, or otherwise.

c60

C. S. p. 541, Sect. 71.

1 SECT. 80. The counter claim, mentioned in the last sec-
2 tion, must be an existing one in favor of a defendant, and
3 against a plaintiff, between whom a several judgment might
4 be had in the action, and arising out of one of the following
5 causes of action :

6 *First.*—A cause of action arising out of the contract or
7 transaction, set forth in the complaint, as the foundation of
8 the plaintiff's claim, or connected with the subject of the
9 action ;

10 *Second.*—In an action arising on contract, any other cause
11 of action arising also on contract, and existing at the com-
12 mencement of the action.

C. S. p. 541, Sect.
73. Amended.

1 SECT. 81. The defendant may set forth by answer as
2 many defenses and counter claims as he has ; they shall
3 each be separately stated, and refer to the causes of action
4 which they are intended to answer, in such manner that
5 they may be intelligibly distinguished ; the defendant may
6 also demur to one or more of several causes of action in the
7 complaint, and answer the residue.

C. S. p. 541, Sect.
74. Amended.

1 SECT. 82. Sham and irrelevant answers or defenses and
2 frivolous demurrers may be stricken out, or judgment ren-
3 dered notwithstanding the same, on motion, as for want of
4 an answer.

THE REPLY.

C. S. p. 541, Sect.
75. Amended.

1 SECT. 83. When the answer contains new matter con-
2 stituting a counter claim, the plaintiff may, within thirty
3 days, reply to such new matter, denying each allegation
4 controverted by him or any knowledge or information there-
5 of sufficient to form a belief, and he may allege in ordinary
6 and concise language without repetition, any new matter
7 not inconsistent with the complaint, constituting a defense
8 to such new matter in the answer ; or he may demur to an
9 answer containing new matter when upon its face it does
10 not constitute a counter claim or defense ; and the plaintiff
11 may demur to one or more of such defenses or counter
12 claims, and reply to the residue of the counter claims.

1 SECT. 84. If the answer contains a statement of new

2 matter constituting a defense, and the plaintiff fails to reply
 3 or demur thereto within the time allowed by law, the defend- C. S. p. 541, Sect. 75,
 4 ant may move on notice for such judgment as he may be in part. Amended. c 60
 5 entitled to upon such statement, and the court may there-
 6 upon render judgment, order a reference, or assessment of
 7 damages by a jury, as the case may require.

1 SECT. 85. If a reply to any counter-claim is insufficient, C. S. p. 541, Sect. 75,
 2 the defendant may demur thereto, stating the grounds in part. Amended.
 3 thereof.

GENERAL RULES OF PLEADING.

1 SECT. 86. Every pleading in a court of record shall be
 2 subscribed by the attorney of the party, and when any C. S. p. 542, Sect. 77,
 3 pleading in a case is verified, all subsequent pleadings, ex- in part.
 4 cept demurrers, shall be verified also.

1 SECT. 87. The verification shall be to the effect that the
 2 same is true to the knowledge of the person making it, ex-
 3 cept as to those matters stated on his information or belief,
 4 and as to those matters that he believes it to be true, and C. S. p. 542, Sect. 77,
 5 shall be made by the party, or, if there are several parties in part. Amended.
 6 united in interest and pleading together, by one at least of
 7 such parties acquainted with the facts, if such party is with-
 8 in the county where the attorney resides and capable of
 9 making the affidavit. The verification may also be made
 10 by the agent or attorney, if the action or defense is founded
 11 upon a written instrument for the payment of money only,
 12 and such instrument is in the possession of the agent or at-
 13 torney, or if all the material allegations of the pleading are
 14 within the personal knowledge of the agent or attorney.
 15 When the pleading is verified by any other person than the
 16 party he shall set forth in the verification, the grounds of
 17 his belief on the subject and the reasons why it is not made
 18 by the party. When a corporation is a party, the verifica-
 19 tion may be made by any officer thereof; and when the
 20 state or any officer thereof in its behalf is a party the verifi-
 21 cation may be made by any person acquainted with the
 22 facts. The verification may be omitted when an admission
 23 of the truth of the allegation might subject the party to
 24 prosecution for felony.

1 SECT. 88. It is not necessary for a party to set forth in
 2 a pleading, the items of an account therein alleged, but he
 3 shall deliver to the adverse party, within ten days after a C. S. p. 542, Sect. 78,
 4 demand thereof, in writing, a copy of the account verified Amended.
 5 by his own oath, or that of his agent or attorney, if within
 6 the personal knowledge of such agent or attorney, to the
 7 effect that he believes it to be true, or be precluded from

8 giving evidence thereof. The court, or judge thereof, may
9 order a further or more particular bill.

c60 c. s. p. 542, Sect. 79. 1 SECT. 89. In the construction of a pleading for the pur-
2 pose of determining its effect, its allegations shall be libe-
3 rally construed, with a view to substantial justice between
4 the parties.

c. s. p. 542, Sect. 80. 1 SECT. 90. If irrelevant or redundant matter is inserted
2 in a pleading, it may be stricken out on motion, and when
3 a pleading is double, or does not conform to the statute, or
4 when the allegations of a pleading are so indefinite or un-
5 certain, that the precise nature of the charge or defense, is
6 not apparent, the court may strike it out on motion, or re-
7 quire it to be amended.

c. s. p. 542, Sect. 81. 1 SECT. 91. In pleading a judgment, or other determina-
2 tion of a court, or officer, of special or general jurisdiction,
3 it shall not be necessary to state the facts conferring juris-
4 diction, but such judgment or determination may be stated
5 to have been duly given or made. If such allegation is
6 controverted, the party pleading is bound to establish on
7 the trial, the facts conferring jurisdiction.

c. s. p. 542, Sect. 82. 1 SECT. 92. In pleading the performance of conditions
2 precedent in a contract, it shall not be necessary to state
3 the facts showing such performance, but it may be stated
4 generally, that the party duly performed all the conditions
5 on his part, and if such allegation is controverted, the party
6 pleading is bound to establish on the trial, the facts show-
7 ing such performance.

c. s. p. 543, Sect. 83. 1 SECT. 93. In pleading a private statute, or a right de-
2 rived therefrom, it is sufficient to refer to such statute by
3 its title, and the day of its approval, and the court shall
4 thereupon take judicial notice thereof.

c66 c. s. p. 605, Sect. 7. 1 SECT. 94. In actions by or against corporations, created
2 by or under the laws of this state, it is sufficient to refer in
3 the complaint or answer to the act of incorporation, or the
4 proceedings by which such corporation was created.

c60 c. s. p. 543, Sect. 84. 1 SECT. 95. In an action for libel or slander, it shall not
2 be necessary to state in the complaint any extrinsic facts
3 for the purpose of showing the application to the plaintiff
4 of the defamatory matter, out of which the cause of action
5 arose; but it shall be sufficient to state generally, that the
6 same was published or spoken concerning the plaintiff; and
7 if such allegation is controverted, the plaintiff is bound to
8 establish on trial, that it was so published or spoken.

1 SECT. 96. In the action mentioned in the last section,
 2 the defendant may in his answer, allege both the truth of C. S. p. 543, Sect. 85.
 3 the matter charged as defamatory, and any mitigating cir- c 60
 4 cumstances to reduce the amount of damages; and whether
 5 he proves the justification or not, he may give in evidence
 6 the mitigating circumstances.

1 SECT. 97. In an action to recover the possession of pro-
 2 perty distrained doing damage, an answer that the defend- C. S. p. 543, Sect. 86.
 3 ant or person, by whose command he acted, was lawfully
 4 possessed of the real property upon which the distress was
 5 made, and that the property distrained was, at the time do-
 6 ing damage thereon, shall be good without setting forth the
 7 title to such real property.

1 SECT. 98. The plaintiff may unite several causes of ac-
 2 tion in the same complaint, whether legal or equitable,
 3 when they are included in either of the following classes: C. S. p. 543, Sect. 87.
 4 *First.*—The same transaction or transactions connected Amended.
 5 with the same subject of action;
 6 *Second.*—Contracts express or implied;
 7 *Third.*—Injuries with or without force to person and
 8 property, or either;
 9 *Fourth.*—Injuries to character; or,
 10 *Fifth.*—Claims to recover real property, with or without
 11 damages for withholding thereof, and the rents and profits
 12 of the same; or,
 13 *Sixth.*—Claims to recover personal property, with or
 14 without damages for the withholding thereof; or,
 15 *Seventh.*—Claims against a trustee by virtue of a con-
 16 tract, or by operation of law. But the causes of action so
 17 united, shall belong to one only of these classes, and
 18 affect all the parties to the action, and not require different
 19 places of trial, and shall be separately stated.

1 SECT. 99. Every material allegation of the complaint
 2 not specifically controverted by the answer as prescribed, C. S. p. 543, Sect. 88.
 3 and every material allegation of new matter in the answer Amended.
 4 constituting a counter claim not controverted by the reply
 5 as prescribed, shall, for the purposes of the action, be taken
 6 as true; but the allegation of new matter in the answer not
 7 relating to a counter claim or of new matter in a reply is to
 8 be deemed controverted by the adverse party as upon a di-
 9 rect denial or avoidance, as the case may require.

MISTAKES IN PLEADINGS, AND AMENDMENTS.

1 SECT. 100. No variance between the allegation in a
 2 pleading and the proof, is material, unless it has actually C. S. p. 543, Sect. 90.
 3 misled the adverse party to his prejudice in maintaining his

4 action or defense upon the merits. Whenever it is alleged
5 that a party has been so misled, that fact shall be proved to
6 the satisfaction of the court, and it shall be shown in what
7 respect he has been misled; and thereupon the court may
8 order the pleading to be amended upon such terms as may
9 be just.

c60
C. S. p. 544, Sect. 91.

1 SECT. 101. When the variance is not material, as pro-
2 vided in the last section, the court may direct the fact to be
3 found according to the evidence, or may order an immedi-
4 ate amendment, without costs.

C. S. p. 544, Sect. 92.

1 SECT. 102. When, however, the allegation of the cause
2 of action, or defense to which the proof is directed is un-
3 proved, not in some particulars only, but in its entire scope
4 and meaning, it is not to be deemed a case of variance with-
5 in the last two sections, but a failure of proof.

C. S. p. 544, Sect. 93.
Amended.

1 SECT. 103. Any pleading may be once amended by the
2 party of course, without costs, and without prejudice to the
3 proceedings already had, at any time before the period for
4 answering it expires; or if it does not delay the trial, it may
5 be so amended at any time within thirty days after filing of
6 the answer, demurrer or reply to such pleading; in such
7 case the amended pleading shall be filed in the proper office
8 and notice thereof served on the adverse party, who shall
9 have thirty days to answer the same. After the decision of
10 a demurrer, the court may, in its discretion, if it appears
11 that the demurrer was interposed in good faith, allow the
12 party demurring, to withdraw the same, and plead over, or
13 if the demurrer is sustained, may allow the pleading demur-
14 red to, to be amended, on such terms as may be just.

C. S. p. 544, Sect. 94,
first clause,
amended.

1 SECT. 104. The court may, before or after judgment in
2 furtherance of justice, and on such terms as may be proper,
3 amend any pleading, process or proceeding by adding or
4 striking out the name of any party, or by correcting a
5 mistake in the name of a party, a mistake in any other
6 respect, or by inserting other allegations material to the
7 case, or when the amendment does not change substantially
8 the claim or defense, by conforming the pleading or pro-
9 ceeding to the fact proved.

C. S. p. 544, Sect.
94, last clause,
amended.

1 SECT. 105. The court may likewise, in its discretion,
2 allow an answer or reply to be made or other act to be done
3 after the time limited by this chapter, or by an order en-
4 large such time; and may also in its discretion, at any time
5 within one year after notice thereof, relieve a party from a
6 judgment, order, or other proceeding taken against him
7 through his mistake, inadvertence, surprise, or excusable

8 neglect, and may supply an omission in any proceeding.
 9 And whenever any proceeding taken by a party, fails to
 10 conform in any respect to the provisions of the statute, the
 11 court may permit an amendment of such proceeding, so as
 12 make it conformable thereto; but this section does not apply
 13 to a final judgment in an action for a divorce.

1 SECT. 106. When the plaintiff is ignorant of the name C. S. p. 544, Sect. 95. Amended. c 60
 2 of a defendant, such defendant may be designated in any
 3 process, pleading or proceeding by any name, and when his
 4 true name is discovered, the process, pleading or proceed-
 5 ings may be amended accordingly.

1 SECT. 107. The court shall in every stage of an action C. S. p. 544, Sect. 96.
 2 disregard any error or defect in the pleadings or proceed-
 3 ings which does not affect the substantial rights of the ad-
 4 verse party, and no judgment can be reversed or affected
 5 by reason of such error or defect.

1 SECT. 108. The plaintiff and defendant respectively C. S. p. 544, Sect. 97.
 2 may be allowed on motion to make a supplemental com-
 3 plaint, answer or reply, alleging facts material to the case
 4 occurring after the former complaint answer or reply.

TITLE VII.

CONSOLIDATION AND INTERPLEADING.

1 SECT. 109. Whenever two or more actions are pending C. S. p. 620, Sect. 33. c 72
 2 at any time between the same parties, and in the same court,
 3 upon causes of action which might have been joined, the
 4 court may order the actions to be consolidated.

1 SECT. 110. An action may be brought against two or C. S. p. 620, Sect. 35, first clause, amended.
 2 more persons, for the purpose of compelling one to satisfy
 3 a debt due to the other, for which the plaintiff is bound as
 4 surety.

1 SECT. 111. A defendant against whom an action is pend-
 2 ing upon contract or for money, or specific real or personal
 3 property, may at any time before answer, upon affidavit C. S. p. 620, Sect. 35, last clause.
 4 that a person not a party to the action, and without collu-
 5 sion with him, makes a demand against him for the same
 6 money, debt, or property, upon due notice to such person,
 7 and the adverse party, apply to the court for an order to
 8 substitute such person in his place, and discharge the de-
 9 fendant from liability to either party, on his depositing in
 10 court the amount of the debt or money, or delivering the

11 property or its value, to such person as the court may di-
 12 rect; and the court may thereupon make the order, and
 13 and thereafter the action shall proceed between the plaintiff
 14 and person so substituted; and the court may compel them
 15 to interplead.

TITLE VIII.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

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C. S. p. 548, Sect.
130.

1 SECT. 112. The plaintiff in an action to recover the pos-
 2 session of personal property, may at the time of issuing the
 3 summons, or at any time before answer, claim the imme-
 4 diate delivery of such property, in the manner following:

C. S. p. 549, Sect.
131. Amended.

1 SECT. 113. When a delivery is claimed, an affidavit
 2 shall be made by the plaintiff, or by some one in his behalf,
 3 showing:

4 *First.*—That the plaintiff is the owner of the property
 5 claimed, (particularly describing it,) or is lawfully entitled
 6 to the possession thereof, by virtue of a special property
 7 therein, the facts in respect to which shall be set forth;

8 *Second.*—That the property is wrongfully detained by
 9 the defendant;

10 *Third.*—That the same has not been taken for a tax, as-
 11 sessment, or fine pursuant to a statute, or seized under an
 12 execution, or attachment against the property of the plain-
 13 tiff, or if so seized, that it is by statute exempt from such
 14 seizure; and,

15 *Fourth.*—The actual value of the property.

C. S. p. 549, Sect.
132. Amended.

1 SECT. 114. The plaintiff by an indorsement upon the
 2 affidavit may require the issuance of a writ, as provided in
 3 the next section, and shall thereupon file the affidavit with
 4 the clerk of the court where the action is brought.

New.

1 SECT. 115. Upon the filing of the affidavit so indorsed,
 2 the clerk shall issue a writ directed to the sheriff, command-
 3 ing him to take the property therein described, and the
 4 same safely keep until disposed of according to law.

New.

1 SECT. 116. Before such writ is served, a bond shall be
 2 executed to the defendant in an amount double the value of
 3 the property, as stated in the affidavit, conditioned that
 4 the action shall be prosecuted with effect, for a return of
 5 the property to the defendant, if a return is adjudged, and
 6 for the payment to him of such sum as for any cause may be

7 recovered against the plaintiff; such bond shall be execut-
8 ed by the plaintiff, or by some one in his behalf, with two
9 or more sureties to be approved by the sheriff.

1 SECT. 117. On receiving the writ and bond, the sheriff
2 shall forthwith take the property described in the writ, if
3 it is in the possession of the defendant or his agent, and re- C. S. p. 549, Sect.
133 Amended. *c 60*
4 tain it in his custody until delivered as hereinafter provided;
5 he shall also without delay serve on the defendant a copy
6 of the writ and bond, by delivering the same to him per-
7 sonally, if he can be found, or to his agent from whose pos-
8 session the property is taken, or if neither can be found, by
9 leaving them at the usual place of abode of either, with
10 some person of suitable age and discretion.

1 SECT. 118. The defendant may within three days after C. S. p. 549, Sect.
134 Amended.
2 after the service of a copy of the writ and bond, give notice
3 to the sheriff that he excepts to the sufficiency of the sure-
4 ties; if he fails to do so, he shall be deemed to have waived
5 all objections to them; if the defendant excepts to the su-
6 reties, he cannot reclaim the property as provided in the
7 next section.

1 SECT. 119. Within three days after service of the writ
2 and bond as aforesaid, the defendant may, if he does not C. S. p. 549, Sect.
135 Amended.
3 except to the sureties of the plaintiff, require a return of
4 the property, upon executing to the plaintiff a bond in the
5 same amount as the bond of the plaintiff, conditioned that
6 the property shall be delivered to the plaintiff, if delivery
7 is adjudged, and for the payment to him of such sum as for
8 any cause may be recovered against the defendant. Such
9 bond shall be executed by the defendant or by some one in
10 his behalf, with two or more sufficient sureties. If a return
11 of the property is not required, or the sureties of the plain-
12 tiff excepted to, within three days after the taking and ser-
13 vice of the writ and bond upon the defendant then the prop-
14 erty shall be delivered to the plaintiff, except as provided
15 in section one hundred and twenty-one.

1 SECT. 120. Notice shall be given of the justification of
2 sureties of not less than two nor more than six days, which
3 notice shall be served within two days after exception taken C. S. p. 545, Sect.
136 Amended.
4 to the plaintiff's sureties or after the execution of the bond
5 by the defendant as the case may be. If any surety fails
6 to justify at the time appointed, another may be offered and
7 substituted within such time, not exceeding three days, as
8 the judge or officer shall appoint, but there shall be only
9 one adjournment for such purpose, and in case of substitu-
10 tion a new bond shall be executed by all the parties to be
11 bound.

New.

1 SECT. 121. Upon due justification of the plaintiff's sure-
 2 ties, the sheriff shall deliver the property to the plaintiff,
 3 except as prescribed in section one hundred and thirty-eight,
 4 and upon like justification of the defendant's sureties the
 5 property shall be delivered to the defendant. When sure-
 6 ties fail to justify as aforesaid, or when justification is waiv-
 7 ed as herein provided, the sheriff shall forthwith deliver
 8 the property to the party entitled thereto. The sheriff
 9 shall retain the property until the justification is completed
 10 or waived, and he shall be liable for the sufficiency of the
 11 sureties until such justification or waiver is made or there
 12 is a failure to justify. Either party may in writing waive
 13 the justification of sureties as well after as before notice.

c 60

C. S. p. 547, Sect.
114. Amended.

1 SECT. 122. The qualification of sureties is as follows:
 2 *First.*—Each shall be a resident and freeholder of the
 3 state;
 4 *Second.*—Each shall be worth the amount specified in
 5 the bond above his debts and liabilities and exclusive of his
 6 property exempt from execution, but the judge or officer
 7 taking the justification may allow more than the number of
 8 sureties required, to justify severally in amounts less than
 9 the penalty of the bond, if the aggregate amount is equiva-
 10 lent thereto.

C. S. p. 547, Sect.
115. Amended.

1 SECT. 123. For the purpose of justification, each surety
 2 shall attend before a judge, court commissioner, or a justice
 3 of the peace, at the time and place specified, and may be
 4 examined on oath, touching his sufficiency in such manner
 5 as the judge or officer may think proper; the examina-
 6 tion shall be reduced to writing, and filed in the cause.

C. S. p. 547, Sect.
116. Amended.

1 SECT. 124. If the judge or officer deems the sureties
 2 sufficient he shall indorse his approval upon the bond which
 3 shall be delivered to the party entitled thereto, and the
 4 sheriff shall thereupon be exonerated from liability.

C. S. p. 550, Sect.
138.

1 SECT. 125. If the property or any part thereof is con-
 2 cealed in a building or inclosure, the sheriff shall publicly
 3 demand its delivery; if it is not delivered, he shall cause
 4 the building or inclosure to be broken open, and take the
 5 property into his possession, and if necessary he may call
 6 to his aid the power of his county.

C. S. p. 550, Sect.
139.

1 SECT. 126. When the sheriff has taken property, as
 2 herein provided, he shall keep it in a secure place, and de-
 3 liver it to the party entitled thereto, upon receiving his law-
 4 ful fees for taking, and his necessary expenses for keeping
 5 the same.

1 SECT. 127. He shall file the writ with his return there-
 2 on, with the clerk of the court in which the action is pend-
 3 ing, within twenty days after taking the property men-
 4 tioned therein.

C. S. p. 550, Sect.
 141. Amended.

c 60

TITLE IX.

ATTACHMENT.

1 SECT. 128. In an action for the recovery of money, the
 2 plaintiff at the time of issuing the summons, or at any time
 3 afterwards, may have the property of the defendant attached
 4 in the manner hereinafter prescribed, as security for the
 5 satisfaction of such judgment as the plaintiff may recover.

C. S. p. 550, Sect.
 142.

1 SECT. 129. A writ of attachment shall be obtained from
 2 a judge of the court, in which the action is brought, or a
 3 court commissioner of the county.

C. S. p. 550, Sect.
 143. Amended.

1 SECT. 130. The writ may be allowed whenever it ap-
 2 pears by affidavit that a cause of action exists against such
 3 defendant, specifying the amount of the claim, and the
 4 ground thereof; and that the defendant is either a foreign
 5 corporation, or not a resident of this state, or has departed
 6 therefrom with intent to defraud or delay his creditors, or
 7 to avoid the service of a summons, or keeps himself con-
 8 cealed therein with the like intent, or that he has assigned,
 9 secreted, or disposed, or is about to assign, secrete or dis-
 10 pose of his property with intent to delay or defraud his
 11 creditors, or that the plaintiff's debt was fraudulently con-
 12 tracted.

C. S. p. 550, Sect.
 144.

1 SECT. 131. Before issuing the writ the judge or court
 2 commissioner shall require a bond on the part of the plain-
 3 tiff, with sufficient sureties, conditioned that if the defendant
 4 recovers judgment, the plaintiff will pay all costs that may
 5 be awarded to the defendant, and all damages which he
 6 may sustain by reason of the attachment, not exceeding the
 7 penalty of the bond, which shall be at least two hundred
 8 and fifty dollars.

C. S. p. 551, Sect.
 145. Amended.

1 SECT. 132. The writ shall be directed to the sheriff of
 2 any county in which the property of such defendant may be,
 3 and require him to attach and safely keep all the property
 4 of such defendant within his county, and not exempt from
 5 execution, or so much thereof as may be sufficient to satisfy
 6 the plaintiff's demand, with costs and expenses, the amount
 7 of which demand shall be stated in conformity with the

C. S. p. 551, Sect.
 146.

8 complaint. Several writs may be issued at the same time
9 to the sheriffs of different counties.

663
C. S. p. 551, Sect.
147. Amended.

1 **SECT. 133.** All goods and chattels, real and personal,
2 all property, real, personal and mixed, including all rights
3 and shares in the stock of any corporation, all money,
4 bills, notes, book accounts, debts, credits and all other evi-
5 dences of indebtedness belonging to the defendant are sub-
6 ject to attachment.

C. S. p. 551, Sect.
148; 1861—p. 282,
Sect. 1, combined &
amended.

1 **SECT. 134.** The sheriff to whom the writ is directed and
2 delivered shall execute the same without delay as follows :
3 *First.*—Real estate shall be attached by the officer leav-
4 ing a certified copy of the writ, and of his return of such
5 attachment thereon, at the office of the register of deeds of
6 the county in which such real estate is situated, or if there
7 is no register of deeds, with the clerk of the district court
8 of the county, and serving a copy of the same upon the de-
9 fendant in the action if he can be found in his county with-
10 out any other act or ceremony ;

11 *Second.*—Personal property capable of manual delivery
12 to the sheriff, shall be attached by taking it into his cus-
13 tody ;

14 *Third.*—When an attachment is made of articles of per-
15 sonal estate which, by reason of their bulk or other cause,
16 cannot be immediately removed, a certified copy of the writ
17 and of the return of the attachment may at any time within
18 three days thereafter be deposited in the office of the town
19 clerk of the town or city in which the attachment is made,
20 and such attachment shall be as valid and effectual as if the
21 articles had been retained in the possession and custody of
22 the officer.

23 *Fourth.*—The clerk shall receive and file all such copies
24 noting thereon the time when received and keep them safe-
25 ly in his office, and also enter a note thereof, in the order
26 in which they are received, in books kept for noting mort-
27 gages of personal property ; which entry shall contain the
28 names of the parties to the action, and the date of the entry.
29 The clerk's fee for this service shall be twenty-five cents,
30 to be paid by the officer and included in his charge for the
31 service of the writ ;

32 *Fifth.*—Other personal property shall be attached by
33 leaving a certified copy of the writ, and a notice specifying
34 the property attached, with a person holding the same, or
35 if a debt with the debtor, or if stock or interest in stock
36 of a corporation, with the president or other head of the
37 same, or the secretary, cashier, or managing agent thereof ;

38 *Sixth.*—The sheriff shall serve a copy of the writ of at-
39 tachment and inventory served by him upon the defendant,
41 if he can be found within the county ; and if he is a resident

41 thereof, but cannot be found therein, the said sheriff shall
 42 leave such copy at the last usual place of abode of the said
 43 defendant;

44 *Seventh.*—He shall make a full inventory of the property
 45 attached and return the same with the writ of attachment.

1 SECT. 135. Whenever the sheriff, with a writ of attach-
 2 ment or an execution against the defendant, applies to any
 3 person mentioned in the fifth subdivision of section one
 4 hundred and thirty-four for the purpose of attaching or
 5 levying, upon the property mentioned therein, such per-
 6 son shall furnish him with a certificate designating the num-
 7 ber of rights or shares of the defendant, in the stock of the
 8 corporation, with any dividend or incumbrance thereon on
 9 the amount and description of the property, held by such
 10 corporation or person for the defendant, or the debt owing
 11 to the defendant; if such person refuses to do so, he may
 12 be required by the court or judge, to attend before him
 13 and be examined on oath concerning the same, and disobe-
 14 dience to the order may be punished as a contempt.

C. S. p. 552, Sect.
 150.

c 60

1 SECT. 136. If any of the property attached is perishable,
 2 the sheriff shall sell the same in the manner in which pro-
 3 perty is sold on execution. He may also take such legal
 4 proceedings either in his own name, or in the name of the
 5 defendant, as are necessary to collect all debts, credits and
 6 effects of said defendant, and discontinue the same at such
 7 times, or on such terms as the court or judge may direct.

C. S. p. 552, Sect.
 151. Amended.

1 SECT. 137. If property levied upon or taken by a sher-
 2 iff by virtue of a writ of execution, attachment, or other
 3 process, is claimed by any other person than the defendant
 4 or his agent, and such person makes affidavit of his title
 5 thereto, or right to the possession thereof, stating the value
 6 thereof, and the ground of such title or right, the sheriff
 7 may release such levy or taking, unless the plaintiff on de-
 8 mand, indemnify the sheriff against such claim, by a bond
 9 executed by two sufficient sureties, accompanied by their
 10 affidavits, that they are each worth double the value of the
 11 property as specified in the affidavit of the claimant of such
 12 property, and are freeholders and residents of the county,
 13 and no claim to such property, by any other person than
 14 the defendant or his agent, shall be valid against the sheriff
 15 unless so made; and notwithstanding such claim, when so
 16 made, he may retain such property under levy, a reasonable
 17 time to demand such indemnity.

1865—p. 63, Sect. 1.

c 27

1 SECT. 138. If in such case, the person claiming the
 2 ownership of such property commences an action against
 3 the sheriff for the taking thereof, the obligors in the bond

1865—p. 63, Sect. 2.

4 provided for in the preceding section, and the plaintiff in
 5 such execution, attachment or other process, shall, on mo-
 6 tion of such sheriff, be impleaded with him in such action.
 7 When in such case a judgment is rendered against the sher-
 8 iff and his co-defendants, an execution shall be immediately
 9 issued thereon, and the property of such co-defendants shall
 10 be first exhausted before that of the sheriff is sold to satisfy
 11 such execution.

c60 C. S. p. 552, Sect.
 153. Amended.

1 SECT. 139. If judgment is recovered by the plaintiff in
 2 such action, the sheriff shall satisfy the same out of the
 3 property attached by him, if it is sufficient for that pur-
 4 pose :

5 *First.*—By paying to the plaintiff the proceeds of all sales
 6 of perishable property, sold by him, or of all debts or cred-
 7 its collected by him, or so much as shall be necessary to
 8 satisfy the judgment ;

9 *Second.*—If any balance remains due, and an execution
 10 has been issued on the judgment, he shall sell under the
 11 execution, so much of the attached property, real or per-
 12 sonal, as may be necessary to satisfy the balance, if enough
 13 for that purpose remains in his hands ; and in case of the
 14 sale of any rights or shares in the stock of a corporation,
 15 the sheriff shall execute to the purchaser a certificate of the
 16 sale, and the purchaser shall thereupon have all the rights
 17 and privileges in respect thereto, which were had by the
 18 defendant ;

19 *Third.*—If any of the attached property belonging to the
 20 defendant has passed out of the hands of the sheriff without
 21 having been sold or converted into money, the sheriff shall
 22 repossess himself of the same, and for that purpose shall
 23 have all the authority which he had to seize the same under
 24 the attachment, and any person who shall wilfully conceal
 25 or withhold such property from the sheriff, shall be liable
 26 to double damages at the suit of the party injured.

c37 1862—p. 95, Sect. 1.

1 SECT. 140. The defendant may at any time before the
 2 time for answering expires, or at any time thereafter when
 3 he has answered and before trial, apply to the court on no-
 4 tice to vacate the writ of attachment.

c60 C. S. p. 543, Sect.
 162. Amended.

1 SECT. 141. If the motion is made upon affidavits on
 2 the part of the defendant, but not otherwise, the plaintiff
 3 may oppose the same by affidavits in addition to those on
 4 which the writ of attachment was allowed.

C. S. p. 553, Sect.
 163.

1 SECT. 142. When the writ of attachment is fully execut-
 2 ed or discharged, the sheriff shall return the same, with his
 3 proceedings thereon, to the court in which the action was
 4 brought.

1 SECT. 143. Whenever any real estate has been attached
 2 by virtue of any writ of attachment, such real estate may be
 3 discharged and released of record from such attachment in 1861—p. 126, Sect. 1. c 17
 4 the following manner, to wit:

5 *First.*—By filing in the office of the register of deeds of
 6 the county wherein such real estate is situated, a certi-
 7 fied copy of the order discharging or vacating said attach-
 8 ment.

9 *Second.*—By filing with such register of deeds, satisfac-
 10 tion of judgment rendered in such action.

11 *Third.*—By judgment being rendered in the action in fa-
 12 vor of the defendant against whom the attachment is issued,
 13 upon filing in the office of said register of deeds a transcript
 14 of such judgment.

15 *Fourth.*—By filing in the office of such register of deeds
 16 a satisfaction and discharge of such attachment executed
 17 by the plaintiff in said action in the same manner as is
 18 required by law for the execution of conveyances of real
 19 estate.

1 SECT. 144. The plaintiff in such action may at any time
 2 before the final discharge of such attachment, release and 1862—p. 127, Sect. 2.
 3 discharge from such attachment any part or portion of such
 4 real estate incumbered by said attachment, by executing in
 5 the same manner as conveyances of real estate are required
 6 by law to be executed, a release and discharge of such parts
 7 or portions of said real estate so designated to be discharg-
 8 ed and released, and particularly describing the same, and
 9 filing such release in the office of the register of deeds of
 10 the county wherein the lands are situated; and such release
 11 or discharge shall in nowise affect the lien and incumbrance
 12 of said writ of attachment upon the remainder of the real
 14 estate or property covered by said attachment and not in-
 15 cluded in such release.

1 SECT. 145. The register of deeds shall enter such dis- 1862—p. 127, Sect. 3.
 2 charge, release or satisfaction in the same manner and in
 3 the same book provided for the filing and entry of writs of
 4 attachments, except that the names of the plaintiffs shall be
 5 alphabetically arranged in said index, and he shall receive
 6 the same fees as are allowed him for the filing and entry of
 7 attachments in his office.

1 SECT. 146. Any attachment of personal property, under New.
 2 subdivision three of section one hundred and thirty-four,
 3 may be discharged or released of record by filing in the
 4 proper office an order, release, transcript, or satisfaction
 5 piece as provided in section one hundred and forty-three
 6 aforesaid.

TITLE X.

GARNISHMENT.

1860—p. 245, Sect. 1.

1 SECT. 147. In any action in a court of record or just-
 2 ces' court, founded upon contract express or implied, if the
 3 plaintiff, his agent or attorney, at the time of filing the com-
 4 plaint, or issuing the summons therein, or at any time dur-
 5 ing the pendency of the action, or after judgment therein
 6 against the defendant, makes and files with the clerk of the
 7 court, or if the action is in a justices' court, with the justice,
 8 an affidavit stating that he believes that any person (nam-
 9 ing him) has property, money or effects in his hands or
 10 under his control belonging to the defendant in such action,
 11 or that such person is indebted to the defendant, and that
 12 the value of such property or effects or the amount of such
 13 money or indebtedness, if the action is in a district court,
 14 exceeds the sum of twenty-five dollars, or if the action is
 15 in a justices' court, ten dollars, a summons may be issued
 16 against such person, as hereinafter provided; in which sum-
 17 mons and all subsequent proceedings the plaintiff in the ac-
 18 tion shall be known and designated as plaintiff, the defend-
 19 ant as defendant, and the person against whom the sum-
 20 mons is issued, as garnishee.

1860—p. 146, Sect. 2.

1 SECT. 148. If the action is in a justices' court, the sum-
 2 mons shall be issued by the justice, and shall require the
 3 garnishee to appear before him at a time and place mention-
 4 ed in such summons, not less than six nor more than twelve
 5 days from the date thereof, and answer under oath such ques-
 6 tions as may be put to him touching his indebtedness to the
 7 defendant, and any property, money or effects of the defend-
 8 ant in his possession or under his control; which summons
 9 shall be served and returned in the same manner as a sum-
 10 mons issued against a defendant in other causes in such
 11 court, except that no other than personal service shall be
 12 sufficient. A copy of such summons together with a notice
 13 to the defendant stating the time, place and manner of ser-
 14 vice upon the garnishee and signed by the justice of the
 15 peace or officer who served the same, and requiring such
 16 defendant to appear and take part in the examination, shall
 17 be served upon the defendant at least three days before the
 18 time specified in the summons for the appearance of the
 19 garnishee.

1860—p. 146, Sect. 3.

1 SECT. 149. In actions in a district court such summons
 2 may be issued by the plaintiff or his attorney in the action,
 3 and shall be served and returned in the same manner as a
 4 summons issued against a defendant in other cases in said
 5 court, except that the service shall in all cases be personal.

6 It shall require the garnishee to appear before the court in
 7 which the action is pending, or the judge thereof, or the
 8 court commissioner of the county in which the action is
 9 pending, at a time and place mentioned therein, not less
 10 than twenty days from the service thereof, and answer
 11 touching his indebtedness to the defendant, and any prop-
 12 erty, money or effects of the defendant in his possession or
 13 under his control. A copy of the summons together with
 14 a notice to the defendant stating the time, place and man-
 15 ner of service thereof upon the garnishee and signed by the
 16 plaintiff or his attorney, or the person or officer who served
 17 the summons upon the garnishee and requiring such defend-
 18 ant to appear and take part in the examination, shall be
 19 served upon the defendant at least ten days before the time
 20 specified in the same for the appearance of the garnishee.
 21 The garnishee shall be entitled in all cases, whether the ac-
 22 tion is in a district court or before a justice of the peace, to
 23 the same fees as if he was subpoenaed as a witness in such
 24 action, and may be compelled to testify and disclose re-
 25 specting any matters contained in the affidavit in the same
 26 manner as if he was a witness duly subpoenaed for that pur-
 27 pose.

1 SECT. 150. The service of the summons upon the gar-
 2 nishee shall attach and bind all the property, money or ef- 1800—p. 247, Sect. 4. c 70
 3 fects in his hands, or under his control belonging to the
 4 defendant, and any and all indebtedness owing by him to
 5 the defendant at the date of such service, to respond to final
 6 judgment in the action.

1 SECT. 151. Any debt or legacy due from an executor
 2 or administrator, and any other property, money or effects 1800—p. 247, Sect. 5.
 3 in the hands of an executor or administrator may be attached
 4 by this process.

1 SECT. 152. Corporations may be summoned as garni-
 2 shees and may appear by their cashier, treasurer, secretary
 3 or such other officer as they may appoint, and the disclo-
 4 sure of such person or officer shall be considered the dis- 1800—p. 247, Sect. 6.
 5 closure of the corporation: *Provided*, That if it appears
 6 to the court that some other member or officer of the cor-
 7 poration is better acquainted with the subject matter than
 8 the one making disclosure, the court may cite in such per-
 9 son to make answer in the premises; and in case such per-
 10 son neglects or refuses to attend, judgment may be entered
 11 as hereinafter provided upon default; and service of the
 12 summons upon the agent of any corporation not located in
 13 this state, but doing business therein through such agent,
 14 shall be a valid service upon said corporation.

c-70

1860—p. 247, Sect. 7.

1 SECT. 153. No person or corporation shall be adjudged
 2 a garnishee in either of the following cases, viz :
 3 *First.*—By reason of any money, or any other thing due
 4 to the defendant, unless at the time of the service of the
 5 summons, the same is due absolutely and without depend-
 6 ing on any contingency.
 7 *Second.*—By reason of any debt due from said garnishee
 8 on a judgment so long as he is liable to an execution
 9 thereon.
 10 *Third.*—By reason of any liability incurred, as maker or
 11 otherwise, upon any draft, bill of exchange or promissory
 12 note.

1860—p. 248, Sect. 8.

1 SECT. 154. Any money or other thing due or belonging
 2 to the defendant may be attached by this process, before it
 3 has become payable, provided it is due or owing absolutely
 4 and without depending on any contingency as aforesaid ;
 5 but the garnishee shall not be compelled to pay or deliver
 6 the same before the time appointed therefor by the contract.

1860—p. 248, Sect. 9.

1 SECT. 155. Bills of exchange and promissory notes,
 2 whether under or over due, drafts, bonds, certificates of
 3 deposit, bank notes, money, contracts for the payment of
 4 money, and other written evidence of indebtedness, in
 5 the hands of the garnishee at the time of the service of
 6 the summons, shall be deemed “ effects ” under the provi-
 7 sions of this section.

c70

1860—p. 248, Sect.
10, 1864—p. 85,
Sect. 1, combined &
amended.

c36

1 SECT. 156. After the appearance of the garnishee before
 2 the court or officer named in the summons on the day spe-
 3 cified therein, or on the day to which an adjournment may
 4 be had, the said garnishee shall be examined on oath, touch-
 5 ing the matters alleged in the affidavit, and the examining
 6 officer shall take full minutes of such examination, and file
 7 the same with the other papers in the cause ; *Provided,*
 8 That unless the defendant in the action appears at the time
 9 and place specified in the summons, for the appearance of
 10 the garnishee, such court or officer shall not proceed to the
 11 examination of such garnishee, or to the taking of any evi-
 12 dence whatever therein until the plaintiff produces and files
 13 an affidavit, or return of an officer showing the service of
 14 the summons and notice upon the defendant, as prescribed
 15 in sections one hundred and forty-nine and one hundred
 16 and fifty aforesaid, but in case the plaintiff is unable so to
 17 notify such defendant, the said court or officer may post-
 18 pone the examination for such reasonable time as may be
 19 necessary to enable the plaintiff to notify such defendant,
 20 and he then may be notified of the day to which such post-
 21 ponement is had, in the manner provided by law for the
 22 service of a summons in ordinary cases, except that it shall

23 be a notice of ten days in a district court, and of four days
 24 in a justices' court; and shall be personally served if the
 25 defendant is within the state. *Provided*, That when the
 26 defendant does not appear at the time and place specified
 27 in the summons for the appearance of the garnishee, and
 28 the plaintiff or his agent files an affidavit, stating that the
 29 defendant is not a resident of this state, and is not within
 30 the same as the affiant verily believes, it shall not be neces-
 31 sary to serve upon the defendant a copy of such garnishee
 32 summons, or any notice to the defendant in such action in
 33 any court; and the examination shall proceed in like man-
 34 ner as if the defendant had been duly served with such copy
 35 and notice, or had appeared at the time and place specified
 36 in the summons for the appearance of the garnishee.

1 SECT. 157. If it appears from the evidence taken or oth-
 2 erwise, that any person not a party to the action, is inter-
 3 ested or claims any interest in any of the property or effects
 4 in the hands of the garnishee by virtue of any agreement or
 5 matter which existed prior to the service of the summons,
 6 the examining officer, upon application, may permit such
 7 person to appear in the action and maintain his right, and if
 8 he does not voluntarily appear, notice may be given him to
 9 appear or be barred of his claims, which notice may be serv-
 10 ed as such officer shall direct. In case such person volun-
 11 tarily appears, or notice is given as aforesaid, he shall be
 12 joined as a party to the action and judgment therein shall
 13 bind him in the same manner as if he had been an original
 14 party.

1860—p. 248, Sect. c 70
 §1.

1 SECT. 158. If any person has in his possession any prop-
 2 erty or effects of the defendant, which he holds by a con-
 3 veyance or title that is void as to creditors of said defend-
 4 ant, he may be charged therefor, although the defendant
 5 could not have maintained an action against him for the
 6 same; but in such case, and in all cases where the garni-
 7 shee upon full disclosure denies any indebtedness to, or the
 8 possession or control of any property, money or effects of
 9 of the defendant, there shall be no further proceeding, ex-
 10 cept in the manner following: If the plaintiff in such case
 11 believes that such garnishee does not answer truly in re-
 12 sponse to the questions put to him upon such examination,
 13 or that the conveyance under which he claims title to prop-
 14 erty, is void as against the creditors of the defendant, he
 15 may on notice to such garnishee and to the defendant at any
 16 time before the garnishee has been discharged by the court
 17 or officer, of not less than six days, apply to the court in
 18 which the action is pending or a judge thereof, for permis-
 19 sion to file a supplemental complaint in the action making
 20 the garnishee a party thereto, and setting forth the facts

1860—p. 248, Sect.
 12. Amended.

21 upon which he claims to charge such garnishee, and if prob-
 22 able cause is shown by the plaintiff, such permission shall
 23 be granted, and such supplemental complaint shall be filed
 24 and served upon both the defendant and garnishee, either
 25 or both of whom may answer the same, and the plaintiff
 26 may reply if necessary, and the issues thus made up, shall
 27 then be brought to trial, and tried in the same manner in
 28 all respects as civil actions. The provisions of this section
 29 shall not apply to proceedings in justices' courts.

c 70

1860—p. 240, Sect.
13.

1 SECT. 159. When any person duly summoned as a gar-
 2 nishee neglects to appear at the time specified in the sum-
 3 mons, or within two hours thereafter, he shall be defaulted,
 4 and judgment shall be rendered against him for the amount
 5 of the damages and costs recovered by the plaintiff in the
 6 action against the defendant, payable in money, and execu-
 7 tion may issue directly against the goods and chattels and
 8 estate of said garnishee therefor: *Provided*, The court may
 9 upon good cause shown, remove such default and permit the
 10 garnishee to appear and answer on such terms as may be
 11 just.

1860—p. 240, Sect.
14.

1 SECT. 160. No judgment shall be rendered against any
 2 garnishee until after judgment is rendered against the de-
 3 fendant; but a garnishee may be discharged after examin-
 4 ation and disclosure, if it appears that he ought not to be
 5 held; whenever a garnishee is not discharged as aforesaid,
 6 the cause shall be continued to abide the result of the orig-
 7 inal action.

1860—p. 240, Sect.
15.

1 SECT. 161. No judgment shall be rendered upon the
 2 disclosure of a garnishee except by order of the judge of
 3 the court in which the action is pending, or in case of his
 4 absence or inability to act, by order of a judge of another
 5 district.

1860—p. 240, Sect.
16.

1 SECT. 162. Court commissioners or any referee appointed
 2 by the court for the purpose, are hereby authorized and re-
 3 quired to take the disclosure of any garnishee in writing,
 4 together with any other testimony offered by the parties to
 5 the action, and report the same to the court; all testimony
 6 offered by the parties to be taken subject to any objection
 7 seasonably interposed thereto.

1860—p. 250, Sect.
17.

1 SECT. 163. Any court commissioner or referee shall re-
 2 ceive from the plaintiff ten cents per folio for all evidence
 3 taken and reduced to writing, and the fees so paid by the
 4 plaintiff may be taxed in the judgment against the garni-
 5 shee.

1 SECT. 164. When any person is charged as garnishee
 2 by reason of any property or effects other than an indebted- ^{1860-p. 250, Sect.}
 3 ness payable in money, which he holds, or is bound to de- ^{18.} c 70
 4 liver to the defendant, such garnishee shall deliver the
 5 same or so much thereof as may be necessary, to the officer
 6 holding the execution, and the said property shall be sold
 7 by the officer and the proceeds accounted for in the same
 8 manner as if it had been taken on an execution against the
 9 defendant; *Provided*, The garnishee shall not be compelled
 10 to deliver any specific articles at any other time or place
 11 than as stipulated in the contract between him and the de-
 12 fendant.

1 SECT. 165. Upon application and notice to the parties,
 2 the court may determine the value of any property or ef-
 3 fects so in the hands of the garnishee for delivery, and may ^{1860-p. 250, Sect.}
 4 make any order relative to the keeping, delivery and sale ^{19.}
 5 of the same, that is necessary to protect the rights of
 6 those interested, and may make any order touching the pro-
 7 perty attached that is necessary for the protection of all
 8 parties interested upon the application of any party in in-
 9 terest, and may require, at any time after the service of
 10 such garnishee summons, the property, money or effects so
 11 attached to be brought into court, or delivered to a receiver
 12 appointed by the court.

1 SECT. 166. Whenever it appears that any property or
 2 effects in the hands of the garnishee belonging to the de-
 3 fendant, are properly mortgaged, pledged, or in any way ^{1860-p. 250, Sect.}
 4 liable for the payment of any debt due to said garnishee, ^{20.}
 5 the plaintiff may be allowed under a special order of court,
 6 to pay or tender the amount due, and the garnishee shall
 7 thereupon deliver the property or effects, as hereinbefore
 8 provided, to the officer holding the execution, who shall sell
 9 the same as in other cases, and out of the proceeds shall
 10 repay the plaintiff the amount paid by him to the garnishee
 11 for the redemption of such property or effects with legal
 12 interest thereon, and apply the balance upon the execu-
 13 tion.

1 SECT. 167. If any garnishee refuses or neglects to de-
 2 liver any property or effects as provided in the preceding ^{1860-p. 250, Sect.}
 3 section, he may be punished for contempt of court, and shall ^{21.}
 4 in addition be liable to the plaintiff for the value of such
 5 property or effects, less the amount of the lien, if any, to
 6 be recovered by action.

1 SECT. 168. Nothing herein shall prevent the garnishee ^{1860-p. 251, Sect.}
 2 from selling such property or effects so in his hands for the ^{22.}
 3 payment of the demand for which they are mortgaged,

4 pledged, or otherwise liable at any time before payment or
5 tender of the amount due to him; *Provided*, Such sale is au-
6 thorized by the terms of the contract between said garnishee
7 and the defendant.

1 SECT. 169. If any such property or effects are destroy-
2 ed without any negligence or default of the garnishee after
3 judgment and before demand by the officer holding the exe-
4 cution, such garnishee shall be discharged from all liability
5 to the plaintiff, for the non-delivery of such property or ef-
6 fects.

c 70
1860—p. 251, Sect.
23.

1 SECT. 170. Judgment against a garnishee shall be ren-
2 dered, if at all, for the amount due the defendant, or so
3 much thereof as may be necessary to satisfy the plaintiff's
4 judgment against said defendant with costs taxed and allow-
5 ed in the proceeding against the garnishee.

1860—p. 251, Sect.
24.

1 SECT. 171. Whenever any person is summoned as a
2 garnishee in the district court, he may at any time before
3 the return day of the summons, appear before the officer
4 named therein, or any justice of the peace competent to try
5 causes between the parties, and with the consent of the
6 plaintiff, to be certified by said officer or justice, make his
7 disclosure upon oath with like effect as if made on the day
8 named in the summons; in case such disclosure is taken by
9 a justice, he shall receive the same fees as are allowed by
10 section one hundred and sixty-four aforesaid.

1860—p. 251, Sect.
25.

1 SECT. 172. If the plaintiff will not consent to such exam-
2 ination and disclosure, the garnishee, in case he is compelled
3 to be absent from the county until after the return day of
4 the summons, may make affidavit to that effect, which with
5 a notice of time, place and the officer or justice, he shall
6 serve upon the plaintiff or his attorney at least twenty-four
7 hours previous to the time specified in it for the disclosure,
8 and upon due proof of such service, his disclosure shall be
9 taken as provided in the preceding section and with like
10 effect.

1860—p. 251, Sect.
26.

1 SECT. 173. If any person summoned as a garnishee ap-
2 pears and submits himself to an examination upon oath as
3 herein provided, he shall be allowed his costs for travel and
4 attendance, and in special and extraordinary cases, such
5 further sum as the court shall deem reasonable for his coun-
6 sel fees and other necessary expenses.

1860—p. 251, Sect.
27.

1 SECT. 174. If such person is adjudged chargeable as
2 garnishee, his said costs and allowance shall be deducted
3 and retained out of the property, money or effects in his

1860—p. 251, Sect.
28.

4 hands and he shall be held accountable only for the balance
5 to be paid on the execution.

1 SECT. 175. If such person is charged on account of any
2 specific articles or personal property, he shall not be oblig-^{1860—p. 251, Sect.}
3 ed to deliver the same to the officer serving the execution ^{29.} c 70
4 until his costs allowed and taxed are fully paid or tendered ;
5 and if he is discharged for any cause he shall recover judgment
6 against the plaintiff for his costs and have execution therefor.

1 SECT. 176. The plaintiff under the provisions of this
2 section shall in no cases, except in cases provided for in ^{1860—p. 252, Sect.}
3 section one hundred and fifty-nine aforesaid, recover a ^{30.}
4 greater sum for costs, including the costs allowed to the
5 garnishee, than the amount of damages recovered.

1 SECT. 177. No judgment shall be rendered against a
2 garnishee in a justices' court where the judgment against the
3 defendant is less than ten dollars exclusive of costs, nor ^{1860—p. 252, Sect.}
4 where the indebtedness of the garnishee to the defendant or ^{31.}
5 the value of the property, money or effects of the defendant
6 in the hands or under the control of the garnishee, as prov-
7 ed, is less than ten dollars. If the action is in a district
8 court no judgment shall be rendered against the garnishee,
9 where the indebtedness proved against him, or the value of
10 the money, property or effects of the defendant in his hands
11 or under his control shall be less than twenty-five dollars ;
12 but in all such cases the garnishee shall be discharged and
13 shall recover his costs and have execution therefor against
14 the plaintiff.

1 SECT. 178. The judgment against a garnishee shall ac-
2 quit and discharge him from all claims of all parties to the ^{1860—p. 252, Sect.}
3 process, in and to the property, money or effects paid, de- ^{32.}
4 livered or accounted for by such garnishee by force of such
5 judgment.

1 SECT. 179. If any person summoned as a garnishee is
2 discharged, the judgment shall be no bar to an action brought ^{1860—p. 252, Sect.}
3 against him by the defendant or other claimants for the ^{33.}
4 same demand.

1 SECT. 180. Any party to a proceeding under this title
2 deeming himself aggrieved by any order or final judgment
3 therein, may remove the same from a justices' court to the ^{1860—p. 253, Sect.}
4 district court, or from a district court to the supreme court, ^{34.}
5 by appeal in the same cases, in like manner, and with like
6 effect as in a civil action.

TITLE XI.

INJUNCTIONS.

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C. S. p. 670, Sect. 4.
Amended.

1 SECT. 181. Writs of injunction attested and sealed as
2 other process of the court may issue upon the order of the
3 court, or a judge thereof, as hereinafter provided.

New.

1 SECT. 182. When it appears by the complaint that the
2 plaintiff is entitled to the relief demanded, and such relief
3 or any part thereof consists in restraining the commission
4 or continuance of some act, the commission or continuance
5 of which during the litigation, would produce injury to the
6 plaintiff, or when, during the litigation it appears that the
7 defendant is about to do or is doing, or threatening, or pro-
8 curing, or suffering some act to be done in violation of the
9 plaintiff's rights respecting the subject of the action, and
10 tending to render the judgment ineffectual, a temporary in-
11 junction may be granted to restrain such act. And where,
12 during the pendency of an action, it appears by affidavit
13 that the defendant threatens, or is about, to remove or dis-
14 pose of his property with intent to defraud his creditors a
15 temporary injunction may be granted to restrain such re-
16 moval or disposition.

New.

1 SECT. 183. The injunction may be granted at the time
2 of commencing the action, or at any time afterwards before
3 judgment, upon its appearing satisfactorily to the court or
4 judge, by the affidavit of the plaintiff, or of any other per-
5 son, that sufficient grounds exist therefor. A copy of the
6 affidavit must be served with the injunction.

New.

1 SECT. 184. An injunction shall not be allowed after an-
2 swer unless upon notice, or upon an order to show cause;
3 but in such case the defendant may be restrained until the
4 decision of the court or judge granting or refusing the in-
5 junction.

New.

1 SECT. 185. When no special provision is made by law
2 as to security upon injunction, the court or judge allowing
3 the writ, shall require a bond on behalf of the party apply-
4 ing for such writ, in a sum not less than two hundred and
5 fifty dollars executed by him or some person for him, as
6 principal together with one or more sufficient sureties to be
7 approved by said court or judge to the effect that the party
8 applying for the writ will pay the party enjoined or detained
9 such damages as he sustains by reason of the writ, if the
10 court finally decide that the party was not entitled thereto.
11 The damages may be ascertained by a reference or other-
12 wise as the court shall direct.

1 SECT. 186. In cases where a sale of real estate upon
 2 execution or foreclosure by advertisement is sought to be
 3 enjoined, the application for an injunction shall be heard Rule 18, District
 Court Rules, p. 7.
 4 and determined upon notice to the adverse party, either by
 5 motion or order to show cause. The application shall be
 6 made immediately on receiving notice of the publication of
 7 the notice of sale; and no injunction in such cases shall be
 8 allowed *ex parte*, unless the rights of the applicant would
 9 otherwise be prejudiced, nor unless a satisfactory excuse is
 10 furnished, showing why the application was not made in
 11 time to allow the same to be heard and determined, upon
 12 notice before the day of sale. In all other cases, if the
 13 court or judge deems it proper that the defendant or any
 14 of several defendants shall be heard before granting the in-
 15 junction, an order may be made, requiring cause to be
 16 shown at a specified time and place why the injunction
 17 should not be granted.

1 SECT. 187. If the injunction is granted without notice,
 2 the defendant at any time before trial, may apply upon no- New.
 3 tice, to the judge of the court in which the action is brought
 4 to vacate or modify the same. The application may be
 5 made upon the complaint, and the affidavits on which the in-
 6 junction was granted, or upon the answer, or affidavits on
 7 the part of the defendant, with or without the answer.

1 SECT. 188. If the application is made upon affidavits on
 2 the part of the defendant, but not otherwise, the plaintiff New.
 3 may oppose the same by affidavits or other evidence in ad-
 4 dition to those on which the injunction was granted.

TITLE XII.

RECEIVERS.

1 SECT. 189. A receiver may be appointed:
 2 *First.*—Before judgment on the application of either
 3 party, when he establishes an apparent right to property
 4 which is the subject of the action, and which is in the pos- New.
 5 session of an adverse party, and the property or its rents
 6 and profits are in danger of being lost or materially injured
 7 or impaired, except in cases where judgment upon failure
 8 to answer may be had without application to the court.
 9 *Second.*—After judgment, to carry the judgment into ef-
 10 fect.
 11 *Third.*—After judgment to dispose of the property ac-
 12 cording to the judgment, or to preserve it during the pen-
 13 dency of an appeal, or when an execution has been returned

14 unsatisfied, and the judgment debtor refuses to apply his
15 property in satisfaction of the judgment.

16 *Fourth.*—In the cases provided by law, when a corpora-
17 tion has been dissolved or is insolvent or in imminent dan-
18 ger of insolvency, or has forfeited its corporate rights; and
19 in like cases, of the property within this state of foreign
20 corporations.

21 *Fifth.*—In such other cases as are now provided by law,
22 or may be in accordance with the existing practice, except
23 as otherwise provided herein.

New.

1 SECT. 190. When it is admitted by the pleading or ex-
2 amination of a party that he has in his possession or under
3 his control any money or other thing capable of delivery,
4 which being the subject of the litigation is held by him as
5 trustee for another party, or which belongs or is due to
6 another party, the court may order the same to be deposi-
7 ted in court or delivered to such party, with or without se-
8 curity, subject to the further direction of the court.

1 SECT. 191. Whenever in the exercise of its authority, a
2 court orders the deposit, delivery or conveyance of money,
3 or other property, and the order is disobeyed, the court,
4 besides punishing the disobedience as for contempt, may
5 make an order requiring the sheriff or other proper officer
6 to take the money or property and deposit, deliver or con-
7 vey it in conformity with the direction of the court.

TITLE XIII.

JUDGMENT UPON FAILURE TO ANSWER.

1 SECT. 192.—Judgment may be had if the defendant fails
2 to answer the complaint, as follows:

3 *First.*—When in an action arising on contract for the
4 payment of money only, the summons has been personally
5 served and duly returned to the clerk, and no answer has
6 been filed within the time allowed by law, the clerk upon
7 the application of the plaintiff shall enter judgment for the
8 amount mentioned in the summons against the defendant,
9 or against one or more of several defendants, in the cases
10 provided for in this chapter. In other actions for the re-
11 covery of money only, on filing the like proof, the plaintiff
12 may apply to the court for a reference to have his damages
13 assessed, or the amount he is entitled to recover, ascertain-
14 ed in any other manner and for judgment.

14 *Second.*—In other actions, the plaintiff may upon like
15 service, return, and default, apply to the court after the ex-

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C. S. p. 555, Sect.
173. Amended.

16 piration of the time for answering, for the relief demanded
 17 in the complaint. If the taking of an account or the proof
 18 of any fact is necessary to enable the court to give judg-
 19 ment, or to carry the judgment into effect, the court may
 20 take the account or hear the proof, or may in its discretion
 21 order a reference for that purpose.

22 *Third.*—In actions where the summons is served by pub-
 23 lication, or by leaving a copy at the last usual abode of the
 24 defendant, the plaintiff may upon like return and default,
 25 apply for judgment, and the court shall thereupon require
 26 proof to be made of the demand set forth in the complaint,
 27 and if the defendant is not a resident of the state, shall re-
 28 quire the plaintiff or his agent to be examined on oath re-
 29 specting any payments that have been made to the plaintiff
 30 or to any one for his use, on account of such demand, and
 31 may render judgment for the amount which he is entitled
 32 to recover. Before judgment the plaintiff shall file, or
 33 cause to be filed, satisfactory security to abide the order of
 34 the court touching the restitution of any property or money
 35 collected or received under or by virtue of the judgment, in
 36 case the defendant or his representatives shall thereafter
 37 apply and be admitted to defend the action and shall suc-
 38 ceed in the defense.

TITLE XIV.

ISSUES.

1 SECT. 193. Issues arise upon the pleadings, when a fact
 2 or conclusion of law is maintained by the one party and con- C. S. p. 557, Sect. 1. c 6 /
 3 troverted by the other; they are of two kinds:
 4 *First.*—Of law; and,
 5 *Second.*—Of fact.

1 SECT. 194. An issue of law arises upon a demurrer to C. S. p. 557, Sect. 2.
 2 the complaint, answer or reply.

1 SECT. 195. An issue of fact arises:
 2 *First.*—Upon a material allegation in the complaint, con-
 3 troverted by the answer; or,
 4 *Second.*—Upon new matter in the answer controverted C. S. p. 557, Sect. 3.
 5 by the reply; or,
 6 *Third.*—Upon new matter in the reply, except when an
 7 issue of law is joined thereon; issues both of law and of
 8 fact may arise upon different and distinct parts of the plead-
 9 ings in the same action.

1 SECT. 196. A trial is the judicial examination of the

c 61

C. S. p. 557, Sect. 4. 2 issues between the parties, whether they are issues of law
3 or of fact.

C. S. p. 557, Sect. 5. 1 SECT. 197. An issue of law shall be tried by the court,
2 unless it is referred as provided by the statute relating to
3 referees.

C. S. p. 557, Sect. 6. 1 SECT. 198. An issue of fact, in an action for the recov-
2 ery of money only, or of specific, real or personal property,
3 or for a divorce from the marriage contract on the ground
4 of adultery, shall be tried by a jury, unless a jury trial is
5 waived, as provided by law, or a reference ordered, as
6 provided by statute relating to referees.

C. S. p. 557, Sect. 7. 1 SECT. 199. Every other issue of fact shall be tried by
2 the court, subject, however, to the right of the parties to
3 consent, or of the court to order, that the whole issue, or
4 any specific question of fact involved therein, be tried by a
5 jury, or referred.

C. S. p. 558, Sect. 8.
Amended. 1 SECT. 200. At any time after issue, and at least eight
2 days before the term, either party may give notice of trial;
3 the party giving the notice shall furnish the clerk, at least
4 four days before the term with a note of the issue, contain-
5 ing the title of the action, the names of the attorneys, and the
6 time when the last pleading was served; and the clerk
7 shall thereupon enter the cause upon the calendar, accord-
8 ing to the date of the issue. The cause once placed upon
9 the calendar of a term, if not tried at the term for which
10 the notice was given, need not be noticed for a subsequent
11 term, but shall remain upon the calendar from term to term,
12 until finally disposed of.

C. S. p. 558, Sect. 9.
Amended. 1 SECT. 201. The issues on the calendar shall be disposed
2 of in the following order, unless for the convenience of
3 parties, or the dispatch of business, the court otherwise
4 directs:
5 *First.*—Issues of fact, to be tried by a jury;
6 *Second.*—Issues of fact, to be tried by the court;
7 *Third.*—Issues of law.

C. S. p. 558, Sect. 10. 1 SECT. 202. Either party, after the notice of trial,
2 whether given by himself or by the adverse party, may
3 bring the issue to trial, and in the absence of the adverse
4 party, unless the court for good cause otherwise directs,
5 may proceed with his case and take a dismissal of the ac-
6 tion, or a verdict, or judgment, as the case may require.

C. S. p. 558, Sect. 11. 1 SECT. 203. A separate trial between the plaintiff and
2 any of several defendants, may be allowed by the court
3 whenever in its opinion, justice will be thereby promoted.

1 SECT. 204. A motion to postpone a trial for the ab-
 2 sence of evidence, can only be made upon affidavit, stating
 3 the evidence expected to be obtained, and showing its ma-
 4 teriality, and that due diligence has been used to procure it.

C. S. p. 558, Sect. 12.
 Amended.

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TITLE XV.

TRIAL BY JURY.

1 SECT. 205. When the action is called for trial by jury,
 2 the clerk shall draw from the jury box, the ballots contain-
 3 ing the names of jurors, until the jury is completed or the
 4 ballots are exhausted; if the ballots become exhausted be-
 5 fore the jury is completed, the sheriff, under the direction
 6 of the court, shall summon from the bystanders or the body
 7 of the county, so many qualified persons as are necessary
 8 to complete the jury.

C. S. p. 558, Sect. 14.

1 SECT. 206. Before the jury is sworn the plaintiff shall
 2 pay to the clerk three dollars as a jury fee, which shall be
 3 immediately paid by the clerk to the treasurer of the county.

1860—p. 191, Sect. 1.
 Amended.

c 34

1 SECT. 207. When the jury is completed and sworn, the
 2 ballots containing the names of the jurors sworn, shall be
 3 laid aside till the jury so sworn is discharged, and then they
 4 shall be returned to the box; and every ballot drawn, con-
 5 taining the name of a juror not so sworn, shall be returned
 6 to the box, as soon as the jury is completed.

C. S. p. 558, Sect. 16.

c 61

1 SECT. 208. Either party may challenge the jurors, but
 2 when there are several parties on either side, they shall join
 3 in a challenge before it can be made; the challenges are to
 4 the panel and to individual jurors as in criminal actions,
 5 except that there can be but two peremptory challenges on
 6 each side.

C. S. p. 559, Sect. 17.

1 SECT. 209. When the jury is completed and sworn, the
 2 trial shall proceed in the following order, unless the court
 3 for special reasons, otherwise directs:
 4 *First.*—The plaintiff after stating the issue, shall open
 5 the case and produce the evidence on his part;
 6 *Second.*—The defendant may then open his defense, and
 7 offer his evidence in support thereof;
 8 *Third.*—The parties may then respectively offer rebutt-
 9 ing evidence only, unless the court, for good reason, in fur-
 10 therance of justice, permit them to offer evidence upon their
 11 original case;
 12 *Fourth.*—When the evidence is concluded, unless the

C. S. p. 559, Sect. 18.

13 case is submitted to the jury on either side, or on both
14 sides without argument, the defendant shall commence and
15 the plaintiff conclude the argument to the jury.

16 *Fifth.*—If several defendants, having separate defenses,
17 appear by different counsel, the court shall determine their
18 relative order in the evidence and argument;

19 *Sixth.*—The court may then charge the jury.

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c. s. p. 559, Sect. 19.

1 SECT. 210. Whenever, in the opinion of the court, it is
2 proper that the jury should have a view of real property
3 which is the subject of the litigation, or of the place in
4 which any material fact occurred, it may order the jury to
5 be conducted in a body, in the custody of proper officers,
6 to the place, which will be shown to them by the judge, or
7 by a person appointed by the court for that purpose; while
8 the jury are thus absent, no person other than the judge or
9 person so appointed, shall speak to them on any subject
10 connected with the trial.

c. s. p. 559, Sect. 21.

1 SECT. 211. If, after the impanneling of the jury, and
2 before a verdict, a juror becomes sick, so as to be unable
3 to perform his duty, the court may order him to be dis-
4 charged; in that case, a new juror may be sworn and the
5 trial begin anew, or the juror may be discharged and a new
6 jury then or afterwards impanneled.

c. s. p. 559, Sect. 24.

1 SECT. 212. If while the jury are kept together either
2 during the progress of the trial or after their retirement for
3 deliberation, the court order them to be provided with suit-
4 able and sufficient food and lodging, they shall be so pro-
5 vided by the sheriff at the expense of the county.

c. s. p. 559, Sect. 25.

1 SECT. 213. Upon retiring for deliberation, the jury may
2 take with them, all papers, (except depositions,) which
3 have been received as evidence in the cause, or copies of
4 such parts of public records or private documents, given in
5 evidence, as ought not, in the opinion of the court, to be
6 taken from the person having them in possession; and they
7 may also take with them notes of the testimony, or other
8 proceedings on the trial, taken by themselves or any of
9 them, but none taken by any other person.

c. s. p. 560, Sect. 29.

1 SECT. 214. While the jury are absent, the court may
2 adjourn from time to time, in respect to other business; but
3 it is, nevertheless, to be deemed open for every purpose
4 connected with the cause submitted to the jury, until a vir-
5 dict is rendered or the jury discharged. A final adjourn-
6 ment of the court discharges the jury.

1 SECT. 215. When a verdict is rendered, and before it

2 is recorded, the jury may be polled on the request of either
 3 party, for which purpose each juror must be asked whether
 4 it is his verdict; if any one answers in the negative, the
 5 jury shall be sent out for further deliberation. If the ver-
 6 dict is informal or insufficient, it may be corrected by the
 7 jury under the advice of the court, or the jury may be again
 8 sent out.

C. S. p. 560, Sect. 32.

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1 SECT. 216. When the verdict is given, and is such as
 2 the court may receive, the clerk shall immediately record it
 3 in full in the minutes, and read it to the jury and inquire of
 4 them whether it is their verdict; if any juror disagrees the
 5 fact shall be entered in the minutes, and the jury again sent
 6 out; but if no disagreement is expressed, the verdict is
 7 complete, and the jury shall be discharged from the case.

C. S. p. 561, Sect. 33.

TITLE XVI.

THE VERDICT.

1 SECT. 217. The verdict of a jury is either general or
 2 special. A general verdict is that by which they pronounce
 3 generally upon all or any of the issues, either in favor of
 4 the plaintiff or defendant. A special verdict is that by
 5 which the jury find the facts only, leaving the judgment to
 6 the court; it shall present the conclusions of fact, as estab-
 7 lished by the evidence, and not the evidence to prove them;
 8 and those conclusions of fact shall be so presented, as that
 9 nothing remains to the court, but to draw from them con-
 10 clusions of law.

C. S. p. 561, Sect. 34.

1 SECT. 218. In every action for the recovery of money
 2 only, or specific real property, the jury, in their discretion,
 3 may render a general or special verdict; in all other cases,
 4 the court may direct the jury to find a special verdict in
 5 writing, upon all or any of the issues, and in all cases may
 6 instruct them, if they render a general verdict, to find upon
 7 particular questions of fact, to be stated in writing, and may
 8 direct a written finding thereon. The special verdict or
 9 finding shall be filed with the clerk, and entered upon the
 10 minutes.

C. S. p. 561, Sect. 35.

1 SECT. 219. Where a special finding of facts is incon-
 2 sistent with the general verdict, the former controls the lat-
 3 ter, and the court shall give judgment accordingly.

C. S. p. 561, Sect. 36.

1 SECT. 220. When a verdict is found for the plaintiff in
 2 an action for the recovery of money, or for the defendant,

C. S. p. 561, Sect. 37.

3 when a counter claim for the recovery of money is establish-
4 ed, beyond the amount of the plaintiff's claim as established,
5 the jury shall also assess the amount of the recovery.

1 **SECT. 221.** In an action for the recovery of specific per-
2 sonal property, if the property has not been delivered to
3 the plaintiff and the jury find that he is entitled to a recov-
4 ery thereof, or if the property is not in the possession of
5 the defendant and by his answer he claims a return thereof
6 and the verdict is in his favor, the jury shall assess the val-
7 ue of the property and the damages, if any are claimed in
8 the complaint or answer, which the prevailing party has
9 sustained by reason of the detention or taking and with-
10 holding such property. Whenever the verdict is in favor
11 of the party having possession of the property the value
12 thereof shall not be found.

cb1
C. S. p. 561, Sect. 39.
Amended.

1 **SECT. 222.** Upon receiving a verdict, an entry shall be
2 made in the minutes of the court, specifying the time and
3 place of trial, the names of the jurors, and witnesses, the
4 verdict, and either the judgment to be rendered thereon, or
5 an order that the case be reserved for argument or further
6 consideration; or the judge trying the cause, may in his
7 discretion and upon such terms as shall be just, stay the
8 entry of judgment and further proceedings until the hear-
9 ing and final decision of a motion for a new trial, or in ar-
10 rest of judgment, or for judgment notwithstanding the ver-
11 dict, or to set aside the verdict, or dismiss the action.

C. S. p. 561, Sect. 39.
Amended.

TITLE XVII.

TRIAL BY THE COURT.

1 **SECT. 223.** Trial by jury may be waived by the several
2 parties to an issue of fact in actions arising on contract, and
3 with the assent of the court in other actions, in the manner
4 following:

5 *First.*—By failing to appear at the trial;

6 *Second.*—By written consent, in person or by attorney,
7 filed with the clerk;

8 *Third.*—By oral consent in open court, entered in the
9 minutes.

C. S. p. 562, Sect. 40.

1 **SECT. 224.** Upon the trial of a question of fact by the court,
2 its decision shall be given in writing, and filed with the
3 clerk within twenty days after the term at which the trial
4 took place; in giving the decision, the facts found and the
5 conclusions of law shall be separately stated; judgment
6 upon the decision shall be entered accordingly.

C. S. p. 562, Sect. 41.

1 SECT. 225. On a judgment for the plaintiff upon an is-
 2 sue of law, the plaintiff may proceed in the manner pres-
 3 cribed by the statute, upon the failure of the defendant to
 4 answer where the summons was personally served. If judg-
 5 ment is for the defendant, upon an issue of law, and the
 6 taking of an account, or the proof of any fact is necessary to
 7 enable the court to complete the judgment, a reference may
 8 be ordered as by statute provided.

C. S. p. 562, Sect. 42.

c 61

1 SECT. 226. In addition to the general terms the district
 2 court is always open for the transaction of all *ex parte* busi-
 3 ness, for the entry of judgments, of orders of course, and
 4 all such other orders as have been granted by the court, and
 5 for the hearing and determination of any matter brought be-
 6 fore the court by an order to show cause. The judges of
 7 the several district courts shall by order appoint such spe-
 8 cial terms in the counties of their respective districts as may
 9 be necessary for the convenient transaction of the law busi-
 10 ness therein. And the said courts at any such special term
 11 in any county, may try any issue of law and hear and de-
 12 termine any application, motion, matter and question, ex-
 13 cept the trial of issues of fact, which may be pending in
 14 such court or arise in any action or proceeding in any of
 15 the several counties of the same judicial district in which
 16 the county is situated. When any matter is heard by the
 17 court, the decision may be made out of term; and such de-
 18 cision may be an order or a direction that an order or judg-
 19 ment be entered; and upon filing in the office of the clerk
 20 in the county where the action or proceeding is pending,
 21 the decision in writing signed by the judge, an order or
 22 judgment as the case may require, if any, shall be entered
 23 by such clerk, in conformity with such decision.

1862—p. 66, Sect. 1.
Amended.

c 15

1 SECT. 227. In all cases where the rights of parties de-
 2 mand immediate action, the several district judges, may,
 3 by an order to show cause, appoint a time and place within
 4 their respective districts for the hearing of any matter em-
 5 braced in the preceding section, and at the time and place
 6 appointed may hear the same, and make and file the decis-
 7 ion in like manner as in other cases.

1862—p. 63, Sect. 2.
Amended.

c 15

TITLE XVIII.

TRIAL BY REFEREES.

1 SECT. 228. Upon the agreement of the parties to a civ-
 2 il action, or a proceeding of a civil nature, filed with the

C. S. p. 563, Sects.
47 & 49, combined.

c 61

3 clerk or entered upon the minutes, a reference may be
4 ordered :

5 *First.*—To try any or all the issues in such action or pro-
6 ceeding, whether of fact or law, (except an action for di-
7 vorce,) and to report a judgment thereon ;

8 *Second.*—To ascertain and report any fact in such action,
9 or special proceeding or to take and report the evidence
10 therein.

1 SECT. 229. When the parties do not consent, the court
2 may, upon the application of either, or of its own motion,
3 direct a reference in the following cases :

4 *First.*—When the trial of an issue of fact requires the
5 examination of a long account on either side, in which case
6 the referees may be directed to hear, and decide the whole
7 issue, or to report upon any specific question of fact involv-
8 ed therein ;

9 *Second.*—When the taking of an account is necessary for
10 the information of the court, before judgment, or for carry-
11 ing a judgment or order into effect ;

12 *Third.*—When a question of fact other than upon the
13 pleadings arises, upon motion or otherwise, in any stage of
14 the action ; or,

15 *Fourth.*—When it is necessary for the information of the
16 court in a special proceeding of a civil nature.

1 SECT. 230. A reference may be ordered to any person
2 or persons, not exceeding three, agreed upon by the par-
3 ties, or if the parties do not agree, the court or judge shall
4 appoint one or more persons, not exceeding three, residents
5 of any county of this state, and having the qualification of
6 electors.

1 SECT. 231. The trial by referees shall be conducted in
2 the same manner and on similar notice as a trial by the
3 court. They shall have the same power to grant adjourn-
4 ments and to allow amendments to any pleadings, as the
5 court upon such trial, upon the same terms and with like
6 effect. They shall have the same power to administer oaths
7 and enforce the attendance of witnesses as is possessed by
8 the court. They shall state the facts found and the conclu-
9 sions of law separately, and their decision shall be given
10 and may be excepted to and reviewed in like manner, but
11 not otherwise, and they may in like manner settle a case or
12 exceptions. The report of referees upon the whole issue
13 shall stand as the decision of the court, and judgment may
14 be entered thereon in the same manner as if the action had
15 been tried by the court. When the reference is to report
16 the facts, the report shall have the effect of a special ver-
17 dict.

c61

c. s. p. 533, Sect. 50.

c33

1864—p. 82; Sect. 1.

New.

1 SECT. 232. When there are three referees, all shall meet,
 2 but two of them may do any act which might be done by
 3 all; and whenever any authority is conferred on three or
 4 more persons, it may be exercised by a majority upon the
 5 meeting of all, unless expressly otherwise provided by
 6 statute.

C. S. p. 630, Sect. 41. c 72

TITLE XIX.

EXCEPTIONS.

1 SECT. 233. An exception is an objection taken at the
 2 trial to a decision upon a matter of law. The point of the
 3 exception shall be particularly stated, and either delivered
 4 in writing to the judge, or entered in his minutes, and im-
 5 mediately corrected or added to until made conformable to
 6 the truth, or it may afterward be settled in a statement of
 7 the case.

C. S. p. 564, Sects.
55 & 56, combined &
amended. c 61

1 SECT. 234. No particular form of exception is required;
 2 the objection shall be stated, with so much of the evidence
 3 as is necessary to explain it, but no more, and the whole
 4 as briefly as possible.

C. S. p. 564, Sect. 57.

TITLE XX.

NEW TRIALS.

1 SECT. 235. A verdict report or decision may be vacated
 2 and a new trial granted, on the application of the party ag-
 3 grieved, for any of the following causes materially affecting
 4 the substantial rights of such party:

C. S. p. 564, Sect.
59. Amended.

5 *First.*—Irregularity in the proceedings of the court, jury,
 6 referee, or prevailing party, or any order of the court, or
 7 referee, or abuse of discretion, by which the moving party
 8 was prevented from having a fair trial;

9 *Second.*—Misconduct of the jury or prevailing party;

10 *Third.*—Accident or surprise, which ordinary prudence
 11 could not have guarded against;

12 *Fourth.*—Excessive damages, appearing to have been
 13 given under the influence of passion or prejudice;

14 *Fifth.*—That the verdict, report or decision is not justi-
 15 fied by the evidence or is contrary to law;

16 *Sixth.*—Newly discovered evidence, material for the
 17 party making the application, which he could not with rea-
 18 sonable diligence have discovered and produced at the trial;

19 *Seventh.*—Error in law, occurring at the trial and ex-
20 cepted to, by the party making the application.

1 SECT. 236. When the application is made for a cause
2 mentioned in the fourth, fifth, and seventh subdivisions of
3 the last section, it is made either upon a bill of exceptions,
4 or a statement of the case prepared as prescribed in the
5 next section; for any other cause it is made upon affidavit.

c61
C. S. p. 564, Sect.
60. Amended.

1 SECT. 237. The party preparing a bill of exceptions or
2 case shall within five days after the trial serve it upon the
3 adverse party, who may, within five days after such service,
4 propose amendments thereto; and within fifteen days after
5 service of such bill or case, the same with all amendments
6 proposed thereto, shall be presented to the judge or referee,
7 who tried the cause, for allowance or settlement and signa-
8 ture, upon a notice of five days; if not presented within
9 the time aforesaid the same shall be deemed abandoned.
10 The case or bill being examined and found conformable to
11 the truth shall be allowed and signed by the judge or
12 referee.

C. S. p. 565, Sect.
61. Amended.

TITLE XXI.

GENERAL PROVISIONS.

1 SECT. 238. Whenever damages are recoverable, the
2 plaintiff may claim and recover any rate of damages, to
3 which he may be entitled for the cause of action estab-
4 lished.

C. S. p. 565, Sect. 64.

1 SECT. 239. Any party may, and if required by the court
2 shall when the evidence is closed, submit in distinct and
3 concise propositions the conclusions of fact which he claims
4 to be established, or the conclusions of law which he de-
5 sires to be adjudged, or both; they may be written and
6 handed to the court, or, at the option of the court, oral and
7 entered in the judge's minutes; but in either case they shall
8 be entered with any exceptions that may be taken, if either
9 party requires it.

C. S. p. 565, Sect. 65.

1 SECT. 240. The provisions of this chapter respecting
2 trials by jury apply, so far as they are in their nature ap-
3 plicable, to trials by the court or referees.

C. S. p. 565, Sect. 66.

1 SECT. 241. The defendant may at any time before the
2 trial or judgment, serve upon the plaintiff an offer to allow
3 judgment to be taken against him for the sum or property,

c72
C. S. p. 626, Sect. 8.

4 to the effect therein specified, with costs. If the plaintiff
 5 accepts the offer, and gives notice thereof, within ten days,
 6 he may file the offer, with an affidavit of notice of accep-
 7 tance, and the clerk shall thereupon enter judgment accord-
 8 ingly; if the notice of acceptance is not given, the offer is
 9 to be deemed withdrawn, and cannot be given in evidence;
 10 and if the plaintiff fails to obtain a more favorable judg-
 11 ment, he cannot recover costs, but must pay costs to the
 12 defendant.

1 SECT. 242. The action may be dismissed without a final
 2 determination of its merits, in the following cases.

3 *First.*—By the plaintiff himself at any time before trial,
 4 if a provisional remedy has not been allowed, or counter C. S. p. 554, Sect. 170. *c 60*
 5 claim made;

6 *Second.*—By either party with the written consent of the
 7 other; or by the court upon the application of either party,
 8 after notice to the other, and sufficient cause shown at any
 9 time before the trial;

10 *Third.*—By the court, where, upon the trial and before
 11 the final submission of the case, the plaintiff abandons it, or
 12 fails to substantiate or establish his claim, or cause of action,
 13 or right to recover;

14 *Fourth.*—By the court, when the plaintiff fails to appear
 15 on the trial, and the defendant appears and asks for the dis-
 16 missal;

17 *Fifth.*—By the court, on the application of some of the
 18 defendants, when there are others whom the plaintiff fails
 19 to prosecute with diligence. All other modes of dismiss-
 20 ing an action, by nonsuit or otherwise, are abolished. The
 21 dismissal mentioned in the first two subdivisions, is made
 22 by an entry in the clerk's register, and a notice served on
 23 the adverse party; judgment may thereupon be entered ac-
 24 cordingly.

1 SECT. 243. In every case, other than those mentioned
 2 in the last section, the judgment shall be rendered on the C. S. p. 554, Sect. 171.
 3 merits.

1 SECT. 244. Judgment may be given for or against one
 2 or more of several plaintiffs, and for or against one or more C. S. p. 554, Sect. 167.
 3 of several defendants, and it may, when the justice of the
 4 case requires it, determine the ultimate rights of the par-
 5 ties on each side, as between themselves.

1 SECT. 245. In an action against several defendants, the C. S. p. 554, Sect. 168.
 2 court may, in its discretion, render judgment against one or
 3 more of them, leaving the action to proceed against the oth-
 4 ers, whenever a several judgment is proper.

c60
C. S. p. 554, Sect.
169.

1 SECT. 246. The relief granted to the plaintiff, if there
2 is no answer, cannot exceed that which he has demanded in
3 his complaint, but in any other case, the court may grant
4 him any relief consistent with the case made by the com-
5 plaint, and embraced within the issue.

c61
C. S. p. 555, Sect. 67.

1 SECT. 247. When a trial by jury has been had, judg-
2 ment shall be entered by the clerk in conformity to the ver-
3 dict, unless the court orders the case to be reserved for
4 argument, or further consideration, or grants a stay of pro-
5 ceedings.

C. S. p. 555, Sect. 69.

1 SECT. 248. If a counter claim established at the trial,
2 exceeds the plaintiff's demand so established, judgment for
3 the defendant shall be given for the excess, or if it appears
4 that the defendant is entitled to any other affirmative relief,
5 judgment shall be given accordingly.

C. S. p. 556, Sect.
70. Amended.

1 SECT. 249. In an action to recover the possession of per-
2 sonal property, judgment may be rendered for the plaintiff
3 and for the defendant in the same action or for either of
4 them. Judgment for either party if the property has not
5 been delivered to him and a return is claimed in the com-
6 plaint or answer, may be for the possession, or the value
7 thereof in case possession cannot be obtained, and damages
8 for the detention or taking and withholding the same.
9 When the prevailing party is in possession of the property
10 the value thereof shall not be included in the judgment.
11 If the property has been delivered to the plaintiff and the
12 action is dismissed before answer, or, if the answer so claims,
13 the defendant shall have judgment for a return of the prop-
14 erty and damages, if any, for the detention or taking and
15 withholding such property, but such judgment shall not be
16 a bar to another action for the same property or any part
17 thereof.

C. S. p. 556, Sect. 75.

1 SECT. 250. The judgment shall be entered in the judg-
2 ment book, and specify clearly the relief granted, or other
3 determination of the action.

C. S. p. 556, Sect. 74.

1 SECT. 251. If a party dies after verdict or decision
2 upon an issue of fact, and before judgment, the court may
3 nevertheless render judgment thereon; such judgment is
4 not a lien on the real property of the deceased party, but is
5 payable in the course of administration on his estate.

C. S. p. 556, Sect. 75.

1 SECT. 252. Immediately after entering the judgment,
2 the clerk shall attach together and file the following papers,
3 which constitute the judgment roll:
4 *First.*—In case the complaint is not answered by any de-

5 fendant, the summons and complaint, or copies thereof,
6 proof of service and that no answer has been received, the
7 report, if any, and a copy of the judgment;

8 *Second.*—In all other cases, the summons, pleadings, or
9 copies thereof, and a copy of the judgment, with any
10 verdict, decision or report, the offer of the defendant, ex-
11 ceptions, and all orders in any way involving the merits
12 and necessarily affecting the judgment. If a statement of
13 the case is made, the same may be attached to the judgment
14 roll on the request of either party.

1 SECT. 253. If an original pleading or paper is lost or
2 withheld by any person, the court may authorize a copy
3 thereof to be filed and used instead of the original.

C. S. p. 629, Sect. 51.

c 72

1 SECT. 254. On filing a judgment roll, upon a judgment
2 requiring the payment of money, the judgment shall be
3 docketed by the clerk of the court, in which it was rendered,
4 and in any other county upon filing in the office of the clerk
5 of the district court of such county a transcript of the orig-
6 inal docket; and thereupon the judgment from the time of
7 docketing the same becomes a lien on all the real property
8 of the debtor in the county owned by him at the time of
9 the docketing of the judgment or afterwards acquired; said
10 judgment shall survive and the lien thereof continue for the
11 period of ten years and no longer; *Provided*, that in any
12 action upon such judgment the judgment therein shall not
13 be a lien upon the real property of the original judgment
14 debtor.

C. S. p. 598, Sect.
76. Amended.

c 61

1 SECT. 255. Satisfaction of a judgment shall be entered
2 in the judgment book and noted upon the docket, upon an
3 execution returned satisfied, or upon an acknowledgment of
4 satisfaction filed with the clerk, made in the manner of an
5 acknowledgment of a conveyance of real property, by the
6 judgment creditor, or within two years after the judgment,
7 by the attorney, unless a revocation of his authority is pre-
8 viously entered upon the register. And whenever a judg-
9 ment is satisfied in fact, as to any one of several defendants,
10 an entry to that effect may be made in the judgment book
11 and docket. Whenever a judgment is satisfied in fact, oth-
12 erwise than upon an execution, it is the duty of the party or
13 attorney to give such acknowledgment, and upon motion
14 the court may compel it, or may order the entry of satisfac-
15 tion to be made without it.

C. S. p. 567, Sect.
79. Amended.

TITLE XXII.

PROCEEDINGS SUPPLEMENTARY TO THE JUDGMENT.

c72

C. S. p. 625, Sect. 1.

1 SECT. 256. When a judgment is recovered against one
2 or more of several persons; jointly indebted upon an obli-
3 gation, by proceeding as provided by statute, those who
4 were not originally summoned to answer the complaint,
5 may be summoned to show cause why they should not be
6 bound by the judgment, in the same manner as if they had
7 been originally summoned.

C. S. p. 625, Sect. 2.

1 SECT. 257. In case of the death of a judgment debtor,
2 after judgment, the heirs, devisees, legatees, or personal
3 representatives of the judgment debtor, or the tenants of
4 real property owned by him, and affected by the judgment,
5 may be summoned to show cause why the judgement should
6 not be enforced against the estate of the judgment debtor,
7 in their hands respectively. The proceedings thereon are
8 subject to the provisions of the chapter upon actions by or
9 against executors, administrators, legatees, heirs and devi-
10 sees.

C. S. p. 625, Sect. 3.
Amended.

1 SECT. 258. Said summons shall be subscribed by the
2 attorney of the judgment creditor, describe the judgment,
3 and require the person summoned, to show cause within
4 thirty days after service of the summons, and shall be serv-
5 ed in the same manner as an ordinary summons.

C. S. p. 625, Sect. 4.
Amended.

1 SECT. 259. The summons shall be accompanied by an
2 affidavit of the judgment creditor or his attorney, that the
3 judgment has not been satisfied, to his knowledge or in-
4 formation and belief, and shall specify the amount due
5 thereon.

C. S. p. 626, Sect. 5.
Amended.

1 SECT. 260. Upon such summons, the party summoned
2 may answer, within the time specified therein, denying the
3 judgment, or setting up any defense which has arisen sub-
4 sequent to the rendition thereof, if he is proceeded against
5 according to section two hundred and fifty-six, he may
6 make the same defense which might have been made origin-
7 ally to the action, except the statute of limitations; if he is
8 proceeded against according to section two hundred and
9 fifty-seven he may make the same defense which he might
10 have made to an action upon the judgment.

C. S. p. 626, Sect. 6.

1 SECT. 261. The party issuing the summons may demur
2 or reply to the answer, and the party summoned may de-
3 mur to the reply, and the issue may be tried and judgment
4 and costs may be given, in the same manner as in an action,

5 and enforced by execution, or the application of property
6 charged with the payment of the judgment, may, if necessary
7 be compelled by attachment.

TITLE XXIII.

THE EXECUTION.

1 SECT. 262. The party in whose favor judgment is given,
2 may, at any time within ten years after the entry thereof,
3 proceed to enforce the same, as prescribed by statute. C. S. p. 507, Sect. 80.
Amended. c 61

1 SECT. 263. There are two kinds of writs of execution;
2 one against the property of the judgment debtor, and the
3 other for the delivery of the possession of real or personal
4 property, or such delivery with damages for the detention
5 or taking and withholding the same. C. S. p. 507, Sect. 81.
Amended.

1 SECT. 264. The writ of execution shall be under the
2 seal of the court, subscribed by the clerk, tested in the name
3 of the district judge, indorsed by the attorney of the party
4 applying therefor, and directed to the sheriff, or coroner
5 when the sheriff is a party or interested; it shall intelligibly
6 refer to the judgment, stating the court, the county where
7 the judgment roll or transcript is filed, the names of the
8 parties, the amount of the judgment if it is for money, the
9 amount actually due thereon, and the time of docketing in
10 the county to which the execution is issued, and shall re-
11 quire the officer substantially as follows: C. S. p. 507, Sect. 82.
Amended.

12 *First.*—If it is against the property of the judgment
13 debtor, it shall require the officer to satisfy the judgment,
14 with interest, out of the personal property of such debtor,
15 and if sufficient personal property cannot be found, out of
16 the real property belonging to him on the day when the
17 judgment was docketed in the county, or at any time there-
18 after not exceeding ten years.

19 *Second.*—If it is against real or personal property in the
20 hands of personal representatives, heirs, devisees, legatees,
21 tenants of real property or trustees, it shall require the offi-
22 cer to satisfy the judgment with interest out of such pro-
23 erty;

24 *Third.*—If it is against defendants jointly indebted upon
25 a contract, a part of whom only have been summoned in the
26 action, it shall issue in form against all the defendants, but
27 the attorney of the party causing it to be issued shall in-
28 dorse thereon the names of those defendants who were not
29 summoned, and such execution shall not be levied upon the
30 sole property of any such defendant, but it may be collected

31 out of the personal property of any such defendant owned
32 by him as a partner with the other defendants summoned,
33 or any of them.

34 *Fourth.*—If it is for the delivery of the possession of real
35 or personal property, it shall require the officer to deliver
36 the possession of the same, particularly describing it, to the
37 party entitled thereto, and may at the same time require
38 the officer to satisfy any costs, charges, damages, rents, or
39 profits, recovered by the same judgment, out of the per-
40 sonal property of the party against whom it was rendered
41 and the value of the property for which the judgment was
42 recovered, to be specified therein, if a delivery thereof can-
43 not be had, and if sufficient personal property cannot be
44 found, then out of the real property, as provided in the first
45 subdivision of this section, and in that respect it shall be
46 deemed an execution against property.

c 61

C. S. p. 568, Sect. 83.

1 SECT. 265. The execution shall be made returnable with-
2 in sixty days after its receipt by the officer, to the clerk
3 with whom the judgment roll is filed.

C. S. p. 568, Sect. 84.

1 SECT. 266. Where a judgment requires the payment of
2 money, or the delivery of real or personal property, the
3 same is enforced in these respects, by execution, as provid-
4 ed in the last three sections. Where it requires the per-
5 formance of any other act, a certified copy of the judgment
6 may be served upon the party against whom it is given, or
7 upon the person or officer who is required thereby, or by
8 law, to obey the same, and his obedience thereto enforced.
9 If he refuses he may be punished by the court as for con-
10 tempt.

C. S. p. 568, Sect. 85.
Amended.

1 SECT. 267. Notwithstanding the death of a party after
2 judgment, execution thereon against his property may be
3 issued and executed in the same manner and with the same
4 effect as if he was still living; except that such execution
5 cannot be issued within a year after his death.

C. S. p. 568, Sect. 87.

1 SECT. 268. When the execution is against the property
2 of the judgment debtor, it may be issued to the sheriff of
3 any county where the judgment is docketed. Where it re-
4 quires the delivery of real or personal property, it shall be
5 issued to the sheriff of the county where the property or
6 some part thereof is situated. Executions may be issued
7 at the same time to different counties.

C. S. p. 568, Sect. 88.
Amended.

1 SECT. 269. All goods, chattels real or personal, and all
2 property, real, personal or mixed, including all rights and
3 shares in the stock of any corporation, all money, bills,
4 notes, book accounts, debts, credits and other evidences of

5 indebtedness belonging to the defendant, may be levied up-
6 on and sold on execution. Until a levy, property, not sub-
7 ject to the lien of the judgment, is not affected by the exe-
8 cution.

1 SECT. 270. Upon property subject to the lien of the
2 judgment, a minute by the officer on the execution of the ^{New.}
3 time when said execution was delivered to him stating that
4 at such time he levied upon such property (describing it)
5 shall be deemed a sufficient levy.

1 SECT. 271. Personal property capable of manual delive- ^{C. S. p. 551, Sect.}
2 ry shall be levied upon by the officer taking it into his ^{148, sub. 2} c 60
3 custody.

1 SECT. 272. When an execution is levied upon articles
2 of personal estate, which by reason of their bulk or other ^{New.}
3 cause cannot be immediately removed, a certified copy of
4 the execution and return may within three days thereafter
5 be deposited in the office of the clerk of the city or town in
6 which said articles are, and such levy shall be as valid and
7 effectual as if the articles had been retained in the posses-
8 sion and custody of the officer.

1 SECT. 273. The clerk shall receive and file all such
2 copies, noting thereon the time when received and keep them
3 safely in his office, and also enter a note thereof in the order ^{New.}
4 in which they are received in the books kept for making
5 entries of mortgages of personal property; which entry shall
6 contain the names of parties to the suit and the date of the
7 entry. The clerks fee for this service shall be twenty-five
8 cents to be paid by the officer and included in his charge
9 for the service of the execution

1 SECT. 274. Other personal property shall be levied on
2 by leaving a certified copy of the execution and a notice ^{C. S. p. 551, Sect.}
3 specifying the property levied on, with a person holding the ^{148, sub. 3.} c 60
4 same, or if a debt, with the debtor, or if stock or interest ^{Amended.}
5 in stock of a corporation, with the president or other head
6 of the same, or the secretary, cashier, or managing agent
7 thereof.

1 SECT. 275. The officer shall serve a copy of the execu- ^{C. S. p. 551, Sect.}
2 tion and inventory certified by him upon the defendant, if ^{148, sub. 4.}
3 he can be found within the county; if he is a resident there- ^{Amended.}
4 of, but cannot be found therein, the said officer shall leave
5 such copy at the usual place of abode of the said defendant.

1 SECT. 276. The officer shall make a full inventory of ^{C. S. p. 551, Sect.}
2 the property levied on, and return the same with the exe- ^{148, sub. 3, in part.}
3 cution.

New.

1 SECT. 277. Whenever any gold, silver or copper coin,
2 or any bills or other evidence of debt issued by any moneyed
3 corporation or by the government of the United States and
4 circulated as money is seized upon execution, the officer
5 shall pay and return the same as so much money collected ;
6 but if the same does not, at the time and place of such seiz-
7 ure circulate at par, the officer shall make sale thereof as in
8 other cases.

New.

1 SECT. 278. When goods or chattels are pledged for the
2 payment of money or the performance of any contract or
3 agreement, the right and interest in such goods of the per-
4 son making such pledge may be sold on execution against
5 him and the purchaser shall acquire all the right and inter-
6 est of the defendant, and be entitled to the possession of
7 such goods and chattels, on complying with the terms and
8 conditions of the pledge.

1 SECT. 279. The following named property is exempt
2 from execution and attachment :

c61
C. S. p. 568, Sect. 90.
Amended.

3 *First.*—All wearing apparel of the debtor and his family,
4 all beds, bedsteads and bedding, kept and used by the debt-
5 or and his family ; all stoves and appendages put up or kept
6 for the use of the debtor and his family ; all cooking uten-
7 sils, and all other household furniture not herein enumerat-
8 ed, not exceeding five hundred dollars ;

9 *Second.*—A seat, pew or slip in any house or place of
10 public worship ;

11 *Third.*—All cemeteries, monuments, tombs, and rights
12 of burial, while in use as repositories of the dead ;

13 *Fourth.*—All arms and accoutrements required by law to
14 be kept by any person ;

15 *Fifth.*—The miscellaneous library, and school books, of
16 every individual and family, not exceeding in value one
17 hundred and fifty dollars, and all family pictures ;

18 *Sixth.*—To each householder, ten sheep, with their flee-
19 ces, and the yarn and cloth manufactured from the same,
20 two cows, five swine, and provisions and fuel for the com-
21 fortable subsistence of such householder and family for six
22 months ;

23 *Seventh.*—The tools, implements, material, stock, appa-
24 ratus, team, vehicle, harness, library, or other things, to
25 enable any person to carry on the profession, trade, occupa-
26 tion or business in which such person may be wholly or
27 principally engaged, not exceeding in value five hundred
28 dollars ; the word team, in this subdivision, means either
29 one yoke of oxen, one horse, or a pair of horses ;

30 *Eighth.*—A sufficient quantity of hay, grain, feed and
31 vegetables necessary for keeping six months the animals
32 mentioned in the several subdivisions of this section exempt-
33 ed from execution.

1 SECT. 280. The property hereinbefore mentioned is not
 2 exempt from any attachment issued in an action for the pur-
 3 chase money of the same property, or from an execution issu-
 4 ed upon any judgment rendered therein.

C. S. p. 569, Sect. 91.
Amended.

c 61

1 SECT. 281. Whenever any personal property exempt as
 2 aforesaid, is levied upon, seized or sold by virtue of any
 3 execution, the damages sustained by the owner thereof by
 4 reason of such levy, seizure or sale, and any judgment re-
 5 covered therefor shall be exempt from attachment, execu-
 6 tion or other proceeding whereby any creditor of said
 7 owner seeks to apply the same to the payment of his debt.

1862—p. 101, Sect. 1.
Amended.

c 43

1 SECT. 282. When the officer holding an execution
 2 against any person is of opinion that such person has more
 3 property of the classes specified in section two hundred and
 4 ninety-eight, than is by law exempt, he may levy on the
 5 whole of any one class, and forthwith make an inventory
 6 thereof, and cause the same to be appraised at its cash val-
 7 ue by two disinterested freeholders of the precinct where
 8 such property may be, on oath to be administered by him
 9 to such appraisers. If such appraisal exceeds the amount
 10 by law exempt of that class, the debtor may thereupon forth-
 11 with select of such property an amount not exceeding in
 12 value as so appraised, the amount exempt, and the balance
 13 shall be held and applied by said officer as in other cases.
 14 If neither the debtor nor his agent appears and makes such
 15 selection, the officer shall make the same. If one or more
 16 indivisible articles of any such class is of greater value than
 17 the whole amount exempt of that class, the officer shall sell
 18 the same, and after paying to the debtor the amount exempt
 19 of that class, shall apply the residue in discharge of his said
 20 process.

New.

1 SECT. 283. A levy may be made upon grain or grass
 2 while growing, and upon any other unharvested crops; but
 3 no sale thereof shall be made under such levy, until the
 4 same is ripe or fit to be harvested; and any levy thereon by
 5 virtue of an execution, issued by a justice of the peace,
 6 shall be continued beyond the return day thereof, if neces-
 7 sary, and remain in life, and the execution thereof may be
 8 completed at any time within thirty days after such grain,
 9 grass, or other unharvested crop is ripe, or fit to be har-
 10 vested.

C. S. p. 571, Sect.
105.

c 61

1 SECT. 284. The sheriff shall execute the writ against
 2 the property of the judgment debtor, by levying on the
 3 property, collecting the things in action, or selling the
 4 same, if the court so orders, selling the other property, and
 5 paying to the plaintiff the proceeds, or so much thereof as
 6 will satisfy the execution.

C. S. p. 572, Sect.
100. Amended.

c61

C. S. p. 572, Sect.
110. Amended.

1 SECT. 285. Before the sale of personal property on exe-
 2 cution, notice thereof shall be given as follows :
 3 *First.*—By posting written or printed notice of the time
 4 and place of sale, in three public places of the county where
 5 the sale is to take place, six days successively.
 6 *Second.*—When real property is sold upon judgment,
 7 decree or execution, a similar notice, describing the prop-
 8 erty with sufficient certainty to enable a person of common
 9 understanding to identify it, shall be posted for six weeks
 10 successively, in three public places of the county where the
 11 property or some part thereof is situated, and a copy there-
 12 of shall be published once a week, for the same period, in
 13 a newspaper of the county, if there is one, or if there is
 14 none, then in a paper at the capital of the state.

c63

C. S. p. 582, Sect.
111. Amended.

1 SECT. 286. An officer selling without the notice pre-
 2 scribed by the last section, shall forfeit one hundred dollars
 3 to the agrieved party, in addition to his actual damages ;
 4 and a person taking down or defacing the notice posted, if
 5 done before the sale, or the satisfaction of the execution,
 6 and without the consent of the parties, shall forfeit fifty dol-
 7 lars ; but the validity of the sale is not affected by either
 8 act, either as to third person, or parties to the action.

c61

C. S. p. 572, Sect.
112. Amended.

1 SECT. 287. A sale shall be made by auction between
 2 nine o'clock in the morning and sunset, in the county where
 3 the premises or some part thereof is situate ; after sufficient
 4 property has been sold to satisfy the execution, no more
 5 shall be sold ; neither the officer holding the execution nor
 6 his deputy can purchase ; when the sale is of personal property
 7 capable of manual delivery, it shall be within view of those who
 8 attend the sale, and be sold in such parcels as are likely to
 9 bring the highest price ; and when the sale is of real prop-
 10 erty, and consisting of several known tracts or parcels, they
 11 shall be sold separately, or when a portion of such real
 12 property is claimed by a third person, and he requires it to
 be sold separately, such portion shall be thus sold.

c17

1862—p. 72, Sect. 2.
Amended.

1 SECT. 288. Upon the sale of real property where the
 2 estate sold is less than a leasehold of two years unexpired
 3 term, the sale is absolute ; in all other cases the property
 4 sold, is subject to redemption as provided by law.

1862—p. 72, Sect. 3.
Amended.

1 SECT. 289. Whenever any sale of real property is made
 2 upon any execution, or pursuant to any judgment, decree
 3 or order of a court, (except where otherwise specified in
 4 such judgment, decree or order,) the officer shall make and
 5 deliver to the purchaser a certificate under his hand and seal
 6 containing—
 7 *First.*—A description of the execution, judgment, decree
 8 or order, under which such sale is made.

- 9 *Second.*—A description of the real property sold.
 10 *Third.*—The price paid for each parcel sold separately.
 11 *Fourth.*—The date of the sale and name of the purchaser.
 12 *Fifth.*—When subject to redemption it shall be so stated.
 13 Said certificate shall be executed, proved or acknowledged
 14 and recorded as required by law for the conveyance of real
 15 estate, within twenty days after such sale.

1 SECT. 290. Such certificate so proved or acknowledged
 2 and recorded, shall, upon the expiration of the time for re-^{1862—p. 73, Sect. 4.}
 3 demption, operate as a conveyance to the purchaser or his ^{Amended.}
 4 assigns, of all the right, title and interest of the person
 5 whose property is sold in and to the same, at the date of
 6 the lien upon which the same was sold, without any other
 7 conveyance whatever. c 19

1 SECT. 291. Real estate sold upon execution, judgment
 2 or decree may be redeemed—
 3 *First.*—By the judgment debtor, his heirs or assigns. ^{Now.}
 4 *Second.*—By a creditor having a lien, legal or equitable,
 5 on the real estate or some part thereof, subsequent to that
 6 on which the same was sold. Creditors shall redeem in the
 7 order of their respective liens.

1 SECT. 292. The judgment debtor, his heirs or assigns
 2 may redeem within one year after the day of sale, by pay-
 3 ing to the purchaser the amount of his bid with interest
 4 thereon at the rate of seven per cent. per annum, and if the ^{Now.}
 5 purchaser is a creditor having a prior lien, the amount there-
 6 of with interest. If no such redemption is made the senior
 7 creditor may redeem within five days after the expiration
 8 of said year, and each subsequent creditor within five days
 9 after the time allowed all prior lien holders as aforesaid, by
 10 paying the amount aforesaid, and all liens prior to his own
 11 held by the party from whom such redemption is made;
 12 *provided*, that no creditor can redeem unless within the
 13 year aforesaid, he files notice of his intention to redeem in
 14 the office of the clerk of the court where the judgment is en-
 15 tered.

1 SECT. 293. The person desiring to redeem shall pay to
 2 the person holding the right acquired under such sale, or
 3 for him to the sheriff, or clerk of the district court of the
 4 county in which such real property is situated, the amount
 5 required by law for such redemption, and shall produce to
 6 such person or officer:
 7 *First.*—A certified copy of the docket of the judgment
 8 or deed of conveyance or mortgage, or of the record or files
 9 evidencing any other lien under which he claims the right
 10 to redeem, certified by the officer in whose custody such
 11 docket, record file or files shall be. c 19

12 *Second.*—Any assignment necessary to establish his claim,
 13 verified by the affidavit of himself, or of a subscribing wit-
 14 ness thereto, or of some person acquainted with the signa-
 15 ture of the assignor.

16 *Third.*—An affidavit of himself or his agent, showing the
 17 amount then actually due on his lien.

1 SECT. 294. The person or officer from whom such re-
 2 demption is made, shall make and deliver to the person re-
 3 deeming a certificate under his hand and seal, containing:

4 *First.*—The name of the person redeeming, and the
 5 amount paid by him on such redemption.

6 *Second.*—A description of the sale from which such re-
 7 demption is made, and of the property redeemed.

8 *Third.*—Stating upon what claim such redemption is
 9 made, and if upon a lien, the amount claimed to be due
 10 thereon at the date of redemption.

11 Such certificate shall be executed and proved or acknowl-
 12 edged and recorded, as provided by law for conveyance of
 13 real estate, and if not so recorded within ten days after such
 14 redemption, such redemption and certificate is void, as
 15 against any person in good faith making redemption from
 16 the same person or lien. If such redemption is made by the
 17 owner of the property sold, or his heirs or assigns, such re-
 18 demption annuls such sale; if by a creditor holding a lien
 19 on the property, or some part thereof, said certificate so
 20 executed and proved or acknowledged and recorded, ope-
 21 rates as an assignment to him of the right acquired under
 22 such sale, subject to such right of any other person to redeem,
 23 as is, or may be provided by law.

c19
 1862—p. 73, Sect. 6.
 Amended.

1 SECT. 295. The interest acquired upon any sale is sub-
 2 ject to the lien of any attachment or judgment duly made
 3 or docketed against the person holding the same, as in case
 4 of real property; and may be attached or sold upon execu-
 5 tion, in the same manner.

c61
 C. S. p. 574, Sect.
 119.

1 SECT. 296. Until the expiration of the time allowed for
 2 redemption, the court may restrain the commission of waste
 3 on the property, by order granted with or without notice,
 4 on the application of the purchaser or judgment creditor;
 5 but it is not waste for the person in possession of the prop-
 6 erty at the time of sale, or entitled to possession afterwards,
 7 during the period allowed for redemption, to continue to
 8 use it in the same manner in which it was previously used,
 9 or to use it in the ordinary course of husbandry, or to make
 10 the necessary repairs of buildings thereon, or to use wood
 11 or timber on the property therefor, or for the repair of fen-
 12 ces, or for fuel in his family, while he occupies the property.

1 SECT. 297. If the purchaser of real property sold on
 2 execution, or his successor in interest, is evicted therefrom, C. S. p. 574, Sect.
 3 in consequence of irregularity in the proceedings concern- 120.
 4 ing the sale, or of the reversal or discharge of the judgment,
 5 he may recover the price paid, with interest, from the judg-
 6 ment creditor; such judgment creditor if the recovery was in
 7 consequence of the irregularity, shall thereupon be entitled
 8 to a new execution on the judgment, for the price paid on
 9 the sale, with interest; and for that purpose the judgment
 10 shall be deemed valid against the judgment debtor, his person-
 11 al representatives, heirs or devisees; but not against a pur-
 12 chaser in good faith, or an incumbrancer, whose title or in-
 13 cumbrance has accrued before a levy on such new execution.

1 SECT. 298. When a property, liable to an execution
 2 against several persons, is sold thereon, and more than a C. S. p. 574, Sect.
 3 due proportion of the judgment is levied upon the property 121.
 4 of one of them or one of them pays without a sale, more than his
 5 proportion, he may compel contributions from the others; and
 6 when a judgment is against several, and is upon an obliga-
 7 tion of one of them, as security for another, and the surety
 8 pays the amount, or any part thereof, either by sale of his
 9 property, or before sale, he may compel repayment from
 10 the principal. In such cases, the person so paying or con-
 11 tributing, is entitled to the benefit of the judgment to en-
 12 force contribution or repayment, if within ten days after his
 13 payment he files with the clerk of the court where the judg-
 14 ment was rendered, notice of his payment, and claim to con-
 15 tribution or repayment; upon filing such notice, the clerk
 16 shall make an entry thereof in the margin of the docket.

TITLE XXIV.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

1 SECT. 299. When an execution against property of the
 2 judgment debtor, or of any one of several debtors, in the C. S. p. 574, Sect.
 3 same judgment issued to the sheriff of the county where he 122. Amended.
 4 resides, or if he does not reside in this state, to the sheriff
 5 of the county where the judgment roll, or a transcript of a
 6 justices' judgment is filed, is returned unsatisfied, in whole
 7 or in part, the judgment creditor is entitled to an order
 8 from a judge of the district court from which the execution
 9 was issued, requiring such judgment debtor to appear and
 10 answer concerning his property, before such judge, or a
 11 referee appointed by him at a time and place specified in the
 12 order.

c6)

C. S. p. 575, Sect.
124. Amended.

1 SECT. 300. Instead of the order requiring the attend-
 2 ance of the judgment debtor, as provided in the last section,
 3 the judge may upon proof, by affidavit that there is danger
 4 that the debtor will leave the state, or conceal himself, issue
 5 a warrant requiring the sheriff of any county where such
 6 debtor is to arrest him and bring him before such judge;
 7 upon being brought before the judge, he may be examined
 8 on oath, and ordered to give bond with sureties, that he
 9 will attend from to time, before the judge, or referee, as he
 10 shall direct, during the pendency of the proceeding, and
 11 until the final determination thereof, and will not in the
 12 mean time dispose of any portion of his property, not ex-
 13 empt from execution; in default of giving such bond he
 14 may be committed to jail by warrant of the judge, as for a
 15 contempt.

C. S. p. 575, Sect.
125.

1 SECT. 301. After the issuing of execution against pro-
 2 perty, any person indebted to the judgment debtor may pay
 3 to the sheriff the amount of his debt, or so much thereof as
 4 may be necessary to satisfy the execution, and the sheriff's
 5 receipt is a sufficient discharge for the amount so paid.

C. S. p. 575, Sect.
127.

1 SECT. 302. Witnesses may be required to appear and
 2 testify upon any proceeding under this chapter, in the same
 3 manner as upon the trial of an issue.

C. S. p. 575, Sect.
128. Amended.

1 SECT. 303. If the examination is before a referee the
 2 testimony and proceeding shall be certified by him to the
 3 judge; all examinations and answers before a judge or re-
 4 feree under this chapter, shall be on oath, except that when
 5 a corporation answers, the answer shall be on the oath of
 6 an officer thereof.

C. S. p. 575, Sect.
129.

1 SECT. 304. The judge may order any property of the
 2 judgment debtor, not exempt from execution, in the hands
 3 either of himself or any other person, or due to the judg-
 4 ment debtor, to be applied toward the satisfaction of the
 5 judgment, except that the earnings of the debtor for his per-
 6 sonal services, at any time within thirty days next preced-
 7 ing the order, cannot be so applied when it appears by the
 8 debtor's affidavit, that such earnings are necessary for the
 9 use of a family supported wholly or partly by his labor.

C. S. p. 575, Sect.
130. Amended.

1 SECT. 305. The judge may also by order appoint a re-
 2 ceiver of the property of the judgment debtor not exempt
 3 from execution, or forbid a transfer or other disposition
 4 thereof or any interference therewith.

C. S. p. 575, Sect.
131.

1 SECT. 306. If it appears that a person or corporation
 2 alleged to have property of the judgment debtor, or to be

3 indebted to him, claims an interest in the property, adverse
4 to him, or denies the debt, such interest or debt is recover-
5 able only in an action against such person or corporation,
6 by the receiver; but the judge may, by order, forbid a
7 transfer or other disposition of such property or interest, till
8 a sufficient opportunity is given to the receiver to commence
9 the action, and prosecute the same to judgment and execu-
10 tion; such order may be modified or vacated by the judge
11 granting the same, at any time, on such security as he may
12 direct.

1 SECT. 307. If any person, party, or witness, disobeys C. S. p. 576, Sect. 134. *e 61*
2 an order of the judge or referee, duly served, such person,
3 party, or witness, may be punished by the judge, as for a
4 contempt; the proceedings therefor are prescribed in chap-
5 ter eighty-seven of this statute, respecting the punishment
6 of contempt.

1 SECT. 308. No person shall, on examination pursuant
2 to this chapter, be excused from answering any question on New.
3 the ground that his examination will tend to convict him of
4 the commission of a fraud; but his answer shall not be used
5 as evidence against him in any criminal proceeding or prose-
6 cution.

CHAPTER LXVII.

COSTS.

1 SECTION 1. The right of a party to agree with an attor-
2 ney or counsel for his compensation, is unrestricted, and C. S. p. 577, Sect. 1. Amended. *e 62*
3 the measure and mode of such compensation is left to the
4 agreement, express or implied, of the parties; but there
5 may be allowed to the prevailing party, certain sums by
6 way of indemnity, for his expenses in the action, which al-
7 lowances are termed costs.

1 SECT. 2. Costs are allowed to the prevailing party in
2 actions commenced in the district court as follows:
3 *First.*—To the plaintiff upon a judgment in his favor of
4 one hundred dollars or more in an action for the recovery C. S. p. 577, Sect. 2. Amended.
5 of money only, when no issue of fact or law is joined, five
6 dollars. When an issue is joined, ten dollars;
7 *Second.*—In all other actions except as hereinafter other-
8 wise provided, ten dollars;
9 *Third.*—To the defendant upon discontinuance or dis-
10 missal, five dollars;